[redacted]

(15,447.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1063.

THE PEOPLE OF THE STATE OF NEW YORK, APPELLANTS,

vs.

JOHN C. ENO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 To Hon. William J. Wallace, circuit judge:

The petition of John C. Eno shows that—

First. That your petitioner is imprisoned or restrained in his liberty by the warden of the city prison of N. Y. city.

Second. That he has not been committed and is not detained by virtue of any judgment, decree, final order, or process.

Third. The cause or pretence of the imprisonment or restraint, according to the best knowledge and belief of the petitioner, is certain bench warrants issued upon certain alleged indictments found against your petitioner in the court of general sessions of the peace of the city and county of New York, of which alleged indictments copies are hereto annexed and marked respectively A, B, C, D, and E, which indictments charge that your petitioner has committed certain offences over which the said court of general sessions has not and never has had jurisdiction.

Wherefore your petitioner prays that a writ of *habeas corpus* issue, directed to —, commanding him to produce your petitioner before you forthwith, and to make return of the same, if any there be, why he restrains your petitioner of his liberty.

Dated the 21st day of February, 1893.

JNO. C. ENO.

2 UNITED STATES OF AMERICA, } ss.:
City and County of New York, }

John C. Eno, being duly sworn, doth depose and say that the facts set forth in the above petition subscribed by him are true.

JOHN C. ENO.

Sworn before me this 21st day of February, 1883.

HENRY W. ENGER,
Notary Public, N. Y. Co.

Endorsed: U. S. circuit court. In the matter of the petition of John C. Eno for writ of *habeas corpus*. Original. Bliss & Schley, attorneys for —, 160 Broadway, New York city. U.S. circuit court. Filed Feb. 21, 1893. John A. Shields, clerk.

3 [SEAL.] President of the United States of America to the warden of the city prison, Greeting:

We command you that you have the body of John C. Eno, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said John C. Eno is called or charged, before me, at my chambers, in the United States post-office building, in the city of New York, forthwith, to do and receive what shall then and there be considered concerning him; and have you then — there this writ. — Melville W. Fuller, Chief Justice of the United States, at the city of New York.

Hab. corpus to bring up person.

Witness the 21st day of February, one thousand eight hundred and ninety-three.

JOHN A. SHIELDS, *Clerk.*

BLISS AND SCHLEY,
Attorney- for Petitioner, 160 *Broadway, New York.*

Endorsed: The within writ is hereby adjourned to March 1st, 1893, at 2 o'clock p. m., and the prisoner is remanded in the meantime to the custody of his counsel, George Bliss, who shall then produce him.

Dated Feb. 21st, 1893.

W. J. WALLACE.

Attested Feb. 21st, 1893.

W. J. WALLACE.

4 The undersigned, warden of city prison, respectfully returns and says that he received the annexed paper, marked "A," on the 21 day of February, A. D. 1893, at 2.50 o'clock p. m., at which time there was in the district prison, of which he is warden, the body of Jno. C. Eno, who he believes to be the person named in said paper marked "A," and who was so there under custody as being the person named in an original paper, of which the annexed paper marked "B" is a copy (and the original whereof I now produce). Annexed hereto are also copies of the 5 indictments upon which the said original paper (of which said paper marked B is a copy) was issued.

And so returning, the undersigned produces the body of said person, in obedience to the command expressed in paper "A."

JOHN FALLON,
Warden of City Prison.

New York, 21 day of Feb'y, 1893.

"A."

[SEAL.] The President of the United States of America to the warden of the city prison, Greeting:

Hab. corpus to bring up person.

We command you that you have the body of John C. Eno, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said John C. Eno is called or charged, before me, at my chambers, in the United States post-office building, in the city of New York, forthwith to do and receive what shall then and there be considered concerning him; and have you then — there this writ.

5 Witness Hon. Melville W. Fuller, Chief Justice of the United States, at the city of New York, the 21st day of February, one thousand eight hundred and ninety-three.

JOHN A. SHIELDS, *Clerk.*

BLISS & SCHLEY,
Attorneys for Petitioner, 160 *Broadway, New York.*

(Endorsed:) The within writ is hereby adjourned to March 1st, 1893, at 2 o'clock p. m., and the prisoner is remanded in the meantime to the custody of his counsel, George Bliss, who shall then produce him. Dated Feb. 21st, 1893. Wm. J. Wallace. Allowed Feb'y 21, 1893. Wm. J. Wallace.

"B."

New York General Sessions of the Peace.

THE PEOPLE OF THE STATE OF NEW YORK *against* JOHN C. ENO.	On 5 Indictments for Forgery in the Second and Third Degree.

On motion of the district attorney, ordered by the court that the said John C. Eno stand committed to the custody of the warden of the city prison of the city of New York until thence delivered by due course of law.

A true extract from the minutes.

J. F. CARROLL,
Clerk of Court.

Dated 21st day of Feb'y, 1893.

A true copy of the original commitment.

6 Court of General Sessions of the Peace in and for the City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK *against* JOHN C. ENO.

The grand jury of the city and county of New York by this indictment accuse John C. Eno of the crime of forgery in the third degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the twenty-fifth day of September, in the year of our Lord one thousand eight hundred and eighty-three, at the ward, city, and county aforesaid, feloniously did, with intent to defraud, draw, falsely make, and sign a certain warrant, order, authority, and request for the payment of money, to wit, a certain bank check, in the words and figures following, to wit:

NEW YORK, *Sept. 25th*, 1883.

Second National bank, 5th Ave. & 23rd street,

Pay to the order of A. Dyett & Co. two hundred thousand dollars (Cashier's check.)

$200,000.

JNO. C. ENO, *Pres't.*

[On the margin:] Cashier's check.

for and on account of the Second National Bank of the City of New York, then and there being a banking corporation doing

7 business in said city, without lawful authority or excuse, and did then and there offer, utter, dispose of, and put off the said bank check, knowing the same to have been so drawn, made, and signed as aforesaid, without warrant, order, authority, or excuse and with intent to conceal a misappropriation of money, by delivering the said bank check to a certain copartnership then and there doing business under the firm name and style of A. Dyett and Company, the payees therein named, from whom he obtained thereby money, value, and credit in the sum of two hundred thousand dollars named in said bank check, and who thereupon endorsed the said bank check, and by means thereof obtained from the said The Second National Bank of the City of New York the sum of two hundred thousand dollars named in said bank check in money, lawful money of the United States, and of the value of two hundred thousand dollars; and thereafter, to wit, on the said twenty-fifth day of September, in the year aforesaid, the said John C. Eno, with intent to defraud and to conceal the said misappropriation of the money of said The Second National Bank of the City of New York, did then and there feloniously make certain false entries in a certain book of accounts appertaining to the business of said The Second National Bank of the City of New York, commonly called the Discount Book Number 3, in the words and figures following—that is to say:

25, cashier's.	W. H. Randle, '84,	March	25.....	50,000
	J. C. Fraser,	"	25.....	50,000
	D. B. Cooke,	"	25.....	50,000
	J. L. Smith,	"	25.....	50,000
				200,000

8 whereby it was made to appear that the said sum of two hundred thousand dollars had been loaned and advanced by said The Second National Bank of the City of New York to W. H. Randle, J. C. Fraser, D. B. Cooke, and J. L. Smith, whereas in truth no loan or advance had been made to them or either of them by said The Second National bank, but the said sum of money had been appropriated by said John C. Eno as aforesaid, against the form of the statute in such case made and provided and against the peace of the — State of New York and their dignity.

Second Count.

The grand jury aforesaid by this indictment further accuse the said John C. Eno of the crime of forgery in the second degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the twenty-fifty day of September, in the year of our Lord one thousand eight hundred and eighty-three, at the ward, city, and county aforesaid, with force and arms, with intent to defraud, feloniously did forge *a* certain books of account kept by a certain banking corporation doing business within the city, county, and State of New York under the

name of the Second National Bank of the City of New York, the same being a banking corporation duly organized and existing under and by virtue of the laws of the United States of America, by which said books of accounts a certain pecuniary obligation of W. H. Rundle, J. C. Fraser, D. B. Cooke, and J. L. Smith
9 to the said The Second National Bank of the City of New York purported to be created and affected, which said book of accounts so kept as aforesaid by the said banking corporation is commonly called the Discount Book Number 3, and in the forging of the said book of accounts the said John C. Eno, with intent to defraud, feloniously did then and there falsely make and forge in the said book of accounts certain entries in the words and figures following, to wit:

25, cashier's.	W. H. Randle, '84, March 25.....	50,000	
	J. C. Fraser, "	50,000	
	D. B. Cooke, "	50,000	
	J. L. *Fraser*, "	50,000	
			200,000

whereby was purported to be created and affected a pecuniary obligation of the said W. H. Randle, J. C. Fraser, D. B. Cooke, and J. L. Smith to the said The Second National Bank of the City of New York, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

PETER B. OLNEY,
District Attorney.

10 Court of General Sessions of the Peace in and for the City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOHN C. ENO.

The grand jury of the city and county of New York by this indictment accuse John C. Eno of the crime of forgery in the third degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the eighteenth day of October, in the year of our Lord one thousand eight hundred and eighty-three, at the ward, city, and county aforesaid, feloniously did, with intent to defraud, draw, falsely make, and sign a certain warrant, order, authority, and request for the payment of money, to wit, a certain bank check, in the words and figures following, to wit:

NEW YORK, *Oct. 18th*, 1883.

Second National bank, 5th Ave. & 23rd street,

Pay to the order of A. Dyett & Co. two hundred thousand dollars. (Cashier's check.)

$200,000.

JOHN C. ENO, *Pres't.*

[On the margin:] Cashier's check.

for and on account of the Second National Bank of the City of New York, then and there being a banking corporation doing business in said city, without lawful authority or excuse, and did
11 then and there offer, utter, dispose of, and put off the said bank check, knowing the same to have been so drawn, made, and signed as aforesaid, without warrant, order, authority, or excuse and with intent to conceal a misappropriation of money, by delivering the said bank check to a certain copartnership then and there doing business under the firm name and style of A. Dyett and Company, the payees therein named, from whom he obtained thereby money, value, and credit in the sum of two hundred thousand dollars named in said bank check, and who thereupon endorsed the said bank check, and by means thereof obtained from the said The Second National Bank of the City of New York the sum of two hundred thousand dollars named in said bank check in money, lawful money of the United States, and of the value of two hundred thousand dollars; and thereafter, to wit, on the said eighteenth day of October, in the year aforesaid, the said John C. Eno, with intent to defraud and conceal the said misappropriation of the money of said The Second National Bank of the City of New York, did then and there feloniously make certain false entries in certain books of accounts appertaining to the business of said The Second National Bank of the City of New York, commonly called the Discount Book Number 3, in the words and figures following—that is to say:

Oct. 18, cashier.	B. De Peyster, 1,000 L. S., '84, May		18..50,000	
	A. R. L. Norton, 600 Erie, 160 Union Pacific	"	18..50,000	
	H. T. W. Waller, 500 St. Paul, 500 W. H.	"	18..50,000	
	T. W. Lawrence, 500 N. P., pref.; 100 U. P.	"	18..50,000	
				200,000

12 whereby it was made to appear that the said sum of two hundred thousand dollars had been loaned and advanced by said The Second National Bank of the City of New York to B. de Peyster, A. R. L. Norton, H. T. W. Waller, and T. W. Lawrence, whereas in truth no loan or advance had been made to them or either of them by said The Second National bank, but the said sum of money had been misappropriated by said John C. Eno as aforesaid, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

Second Count.

The grand jury aforesaid by this indictment further accuse the said John C. Eno of the crime of forgery in the second degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New-York, in the county of New York, aforesaid, on the eighteenth day

of October, in the year of our Lord one thousand eight hundred and eighty-three, at the ward, city, and county aforesaid, with force and arms, with intent to defraud, feloniously did forge a certain book of accounts kept by a certain banking corporation doing business within the city, county, and State of New York under the name of The Second National Bank of the City of New York, the same being a banking corporation duly organized and existing under and by virtue of the laws of the United States of America, by which said book of accounts a certain pecuniary obligation of B. de Peyster, A. R. L. Norton, H. T. W. Waller, and T. W. Lawrence
13 to the said Second National Bank of the City of New York purported to be created and affected, which said book of accounts so kept as aforesaid by the said banking corporation is commonly called the Discount Book Number 3, and in the forging of the said book of accounts the said John C. Eno, with intent to defraud, feloniously did then and there falsely make and forge in the said book of accounts certain entries in the words and figures following, to wit:

Oct. 18, cashier.	B. de Peyster, 1,000 L. S., '84, May 18...	50,000
	A. R. L. Norton, 600 Erie, 100 U. P., '84, May 18.....	50,000
	H. T. W. Waller, 500 St. Paul, 500 W. U., '84, May 18...	50,000
	T. W. Lawrence, 500 U. P., pref.; 100 U. Pac., May 18.....	50,000
		200,000

whereby was purported to be created and affected a pecuniary obligation of the said B. de Peyster, A. R. L. Norton, H. T. W. Waller, and T. W. Lawrence to the said The Second National Bank of the City of New York, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

PETER B. OLNEY,
District Attorney.

14 Court of General Sessions of the Peace of the City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOHN C. ENO

The grand jury of the city and county of New York by this indictment accuse John C. Eno of the crime of forgery in the second degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the fifth of April, in the year of our Lord one thousand eight hundred and eighty-four, at the ward, city, and county aforesaid, in a certain book of accounts, known as the Demand Loan Book, kept by a certain corporation

duly organized and existing under and by virtue of the laws of the United States of America and doing business within the State of New York, to wit, at the city and county of New York aforesaid, and known as the Second National Bank of the City of New York, with force and arms, then and there feloniously and with intent to defraud did falsely make and forge a certain entry in the words and figures following—that is to say, 1884, April 5, H. R. Hollins & Co., 3, 75,000—which said false and forged entry, according to the ordinary manner of doing business of the said corporation in
15 that regard, purported that on the fifth day of April, in the year of our Lord one thousand eight hundred and eighty-four, the said corporation had loaned to a certain copartnership, then and there doing business under the firm name and style of H. B. Hollins and Company, the sum of seventy-five thousand dollars, and that the said copartnership was then and there indebted to the said corporation in the said sum of seventy-five thousand dollars, and thereby a claim against the said copartnership of H. B. Hollins and Company purported to be created, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

Second Count.

And the grand jury aforesaid by this indictment further accuse the said John C. Eno of the crime of forgery in the third degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, on the fifth day of April, in the year of our Lord one thousand eight hundred and eighty-four, at the ward, city, and county aforesaid, in a certain book of accounts, known as the Demand Loan Book, belonging to and appertaining to the business of a certain corporation duly organized and existing under and by virtue of the laws of the United States of America and doing business then and there and known as the Second
16 National Bank of the City of New York, feloniously and with intent to defraud did make a false entry in the words and figures following—that is to say, 1884, April 5, H. B. Hollins & Co., 3, 75,000—against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

Third Count.

And the grand jury aforesaid by this indictment further accuse the said John C. Eno of the crime of forgery in the third degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, on the fifth day of April, in the year of our Lord one thousand eight hundred and eighty-four, at the ward, city, and county aforesaid, in a certain book of accounts, known as the Demand Loan Book, belonging to and appertaining to the business of a certain corporation duly organized and existing

under and by virtue of the laws of the United States of America and known as the Second National Bank of the City of New York, with force and arms, feloniously did make a false entry in the words and figures following—that is to say, 1884, April 5, H. B. Hollins & Co., 3, 75,000—with intent thereby to conceal a certain misappropriation of the sum of seventy-five thousand dollars in money of the proper moneys and property of the said corporation by him, the said John C. Eno, therefore committed, against the form of the stat
ute in such case made and provided and against the peace of
17 the people of the State of New York and their dignity.

PETER B OLNEY,
District Attorney.

18 Court of General Sessions of the Peace in and for the City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOHN C. ENO.

The grand jury of the city and county of New York by this indictment accuse John C. Eno of the crime of forgery in the third degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and eighty-four, at the ward, city, and county aforesaid, feloniously did, with intent to defraud, draw, falsely make, and sign a certain warrant, order, authority, and request for the payment of money, to wit, a certain bank check in the words and figures following, to wit:

NEW YORK, *Jan. 16th*, 1884.

Second National bank, 5th Ave. and 23rd street,

Pay to the order of A. Dyett & Co. two hundred thousand dollars. Cashier's check.

$200,000.

JOHN C. ENO, *Pres't.*

[On the margin:] Cashier's check.

for and on account of the Second National Bank of the City of New
York, then and there being a banking corporation doing
19 business in said city, without lawful author- or excuse, and
did then and there offer, utter, dispose of, and put off the said bank check, knowing the same to have been so drawn, made, and signed as aforesaid, without warrant, order, authority, or excuse and with intent to conceal a misappropriation of money, by delivering the said bank check to a certain copartnership then and there doing business under the firm name and style of A. Dyett and Company, the payees therein named, from whom he obtained thereby money, value, and credit in the sum of two hundred thousand dollars named in said bank check, and who thereupon endorsed the said bank check, and by means thereof obtained from

the said The Second National Bank of the City of New York the sum of two hundred thousand dollars named in said bank check in money, lawful money of the United States, and of the value of two hundred thousand dollars; and thereafter, to wit, on said sixteenth day of January, in the year aforesaid, the said John C. Eno, with intent to defraud and to conceal the said misappropriation of the money of said The Second National Bank of the City of New York, did then and there feloniously make certain false entries in a certain book of accounts appertaining to the business of said The Second National Bank of the City of New York, commonly called the Discount Book Number 3, in the words and figures following—that is to say:

Jan. 16, cashier.			
	J. L. D. Smith, 1,000 L. S., June 16.....	50,000	
	W. H. Randel, 1,500 U. Pac., " 16.....	50,000	
20	T. W. Parkin, 1,000 Erie, June 16.....	50,000	
	J. C. Fraser, 200 P. Mail, " 16.....	50,000	
			200,000

whereby it was made to appear that the said sum of two hundred thousand dollars had been loaned and advanced by said The Second National Bank of the City of New York to J. L. D. Smith, W. H. Randel, T. W. Parkin, and J. C. Fraser, whereas in truth no loan or advance had been made to them or either by said The Second National bank, but the said sum of money had been misappropriated by said John C. Eno as aforesaid, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

Second Count.

The grand jury aforesaid by this indictment further accuse the said John C. Eno of the crime of forgery in the second degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the sixteenth of January, in the year of our Lord one thousand eight hundred and eighty-four, at the ward, city, and county aforesaid, with force and arms, with intent to defraud, feloniously did forge a certain book of accounts kept by a certain banking corporation doing business within the city, county, and State of New York under the name of the Second National Bank of the City of New York, the same
21 being a banking corporation duly organized and existing under and by virtue of the laws of the United States of America, by which said book of accounts a certain pecuniary obligation of J. L. D. Smith, W. H. Randel, T. W. Parkin, and J. C. Fraser to the said *the said* Second National Bank of the City of New York purported to be created and affected, which said book of accounts so kept as aforesaid by the said banking corporation, is commonly called the Discount Book Number 3, and in the forging of the said book of accounts the said John C. Eno, with intent to

defraud, feloniously did then and there falsely make and forge in the said book of accounts certain entries in the words and figures following, to wit:

Jan. 16, cashier.

J. L. D. Smith,	100 L. S.,	June 16....	50,000	
W. H. Randel,	1,500 U. Pac.,	" 16....	50,000	
T. W. Parkin,	1,000 Erie,	June 16....	50,000	
J. C. Fraser,	200 P. Mail,	June 16....	50,000	
				200,000

whereby was purported to be created and affected a pecuniary obligation of the said J. L. D. Smith, W. H. Randel, T. W. Parkin, and J. C. Fraser to the said The Second National Bank of the City of New York, against the form of the statute in *each* case made and provided and against the peace of the people of the State of New York and their dignity.

PETER B. OLNEY,
District Attorney.

22 Court of General Sessions of the Peace in and for the City and County of New York.

THE PEOPLE OF STATE OF NEW YORK
against
JOHN C. ENO.

The grand jury of the city and county of New York by this indictment accuse John C. Eno of the crime of forgery in the third degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the twelfth day of February, in the year of our Lord one thousand eight hundred and eighty-four, at the ward, city, and county aforesaid, feloniously did, with intent to defraud, draw, falsely make, and sign a certain warrant, order, authority, and request for the payment of money, to wit, a certain bank check in the words and figures following, to wit:

NEW YORK, *Feb. 12th*, 1884.

Second National bank, 5th Ave. & 23rd street,

Pay to the order of A. Dyett & Co. one hundred thousand dollars Cashier's check.

$100,000.

JNO. C. ENO, *Pres't.*

for and on account of the Second National Bank of the City of New York, then and there being a banking corporation doing
23 business in said city, without lawful authority or excuse, and did then and there offer, utter, dispose of, and put off the said bank check, knowing the same to have been so drawn, made, and signed as aforesaid, without warrant, order, authority, or excuse and with intent to conceal a misappropriation of money, by delivering

the said bank check to a certain copartnership then and there doing business under the firm name and style of A. Dyett and Company, the payees therein named, from whom he obtained thereby money, value, and credit in sum one hundred thousand dollars named in said bank check, and who *therefore* endorsed the said bank check, and by means thereof obtained from the said The Second National Bank of the City of New York the sum of one hundred thousand dollars named in said bank check in money, lawful money of the United States, and of the value of one hundred thousand dollars; and thereafter, to wit, on the said twelfth day of February, in the year aforesaid, the said John C. Eno, with intent to defraud and conceal the said misappropriation of the money of said The Second National Bank of the City of New York, did then and there feloniously make certain false entries in a certain book of accounts appertaining to the business of said The Second National Bank of the City of New York, commonly called the General Debt Blotter, in the words and figures following—that is to say:

Demand Loans, W. G. Moor..... 50,000
Do. F. L. Eldridge..... 50,000

whereby it was made to appear that the said sum of one
24 hundred thousand dollars had been loaned and advanced by said The Second National Bank of the City of New York to W. G. Moor and F. L. Eldridge, whereas in truth no loan or advance had been made to them or either of them by the Second National bank, but the said sum of money had been misappropriated by said John C. Eno as aforesaid, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

Second Count.

The grand jury aforesaid by this indictment further accuse the said John C. Eno of the crime of forgery in the second degree, committed as follows:

The said John C. Eno, late of the First ward of the city of New York, in the county of New York, aforesaid, on the twelfth day of February, in the year of our Lord one thousand eight hundred and eighty, at the ward, city, and county aforesaid, with force and arms, with intent to defraud, feloniously did forge a certain book of accounts kept by a certain banking corporation doing business within the city, county, and State of New York under the name of the Second National Bank of the City of New York, the same being a banking corporation duly organized and existing under and by virtue of the laws of the United States of America, by which said book of accounts a certain pecuniary obligation of W. G. Moor and F. L. Eldridge to the said The Second National Bank of the City
25 of New York purported to be created and affected, which said book of accounts so kept as aforesaid by the said banking corporation is commonly called the General Debit Blotter, and in the forging of the said book of accounts the said John C. Eno,

with intent to defraud, feloniously did then and there falsely make and forge in the said book of accounts certain entries in the words and figures following, to wit:

Demand Loans, W. G. Moor 50,000
Do. F. L. Eldridge 50,000

whereby was purported to be created and affected a pecuniary obligation of the said W. G. Moor and F. L. Eldridge to the said The Second National Bank of the City of New York, against the form of statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

PETER B. OLNEY,
District Attorney.

Endorsed: U. S. circuit court. The People & o'rs *ex rel.* John C. Eno *vs.* John Fallon, warden of the city prison. Return to writ of *habeas corpus*. U. S. circuit court. Filed Feb. 21, 1893. John A. Shields, clerk.

26 United States Circuit Court.

In the Matter of the Petition of JOHN C. ENO for a Writ of *Habeas Corpus.*

On the annexed consent—

Ordered that the hearing upon the petition for a writ of *habeas corpus* herein be adjourned until March 10th, 1893, at 11.30 a. m., at Albany, at the United States court-room, in said city, and that the prisoner be remanded to the custody of George Bliss, Esq., his counsel, to be produced, after the entry of the order made, after such hearing.

Dated March 1st, 1893.

W. J. WALLACE.

27 United States Circuit Court.

In the Matter of the Petition of JOHN C. ENO for a Writ of *Habeas Corpus.*

It is hereby consented that the hearing upon this case be adjourned to March 10th, 1893, before Honorable W. J. Wallace, at Albany, at 11.30 a. m., and that the prisoner need not be produced upon that hearing, but may remain in the custody of his counsel until the entry of the order upon the application for discharge.

Dated February 28th, 1893.

GEORGE BLISS, *For Eno.*
DELANCEY NICOLL, *Dist. Att'y.*

Endorsed: U. S. circuit court. In the matter of the petition of John C. Eno for a writ of *habeas corpus*. Consent. Bliss & Schley, 160 Broadway, New York city. U. S. circuit court. Filed Mar. 17, 1893. John A. Shields, clerk. New York, February 28th, 1893.

28 U. S. Circuit Court, Southern Dist. of New York.

Ex Parte JOHN C. ENO, Petitioner.

Hon. De Lancey Nicoll, district attorney, New York.

SIR: Please take notice that upon the hearing of the writ and the return thereto in the proceeding above entitled I will move the court for leave to file and read therein the annexed affidavit and amended and supplemental petition and for such order and further proceedings on and in respect thereto as may be lawful and proper.

Dated New York, March 8, 1893.

Yours truly,

GEORGE BLISS,

Att'y for Pet'r, 160 *Broadway, New York, N. Y.*

29 In the Circuit Court of the United States for the Southern District of New York.

Ex Parte JOHN C. ENO, Petitioner, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John C. Eno, the petitioner herein, being duly sworn, by this his amended and supplemental petition alleges—

That the Second National bank mentioned in each, all, and every — the indictments, copies whereof are to his original petition herein annexed, was at all times in said indictments alleged an association for carrying on the business of banking, formed under and pursuant to the statutes of the United States of America, to wit, title LXII of the Revised Statutes of the United States; that he was at the said times the president of said association, and that each, all, and every — the acts and things charged against him in said indictments are cognizable under the authority of the United States, and so the same would appear by the minutes of the grand jury of the county of New York by which said indictments were found and otherwise, and this he prays may be enquired of by the court, and that the said warden of the city prison may be required to make due return in respect thereto. Petitioner also hereby prays that this
30 honorable court will issue its writ of certiorari to the district attorney of the county of New York, the judges and clerk of the said court of general sessions of the peace in and for the said city and county of New York, and to all other persons, officers, and courts in whose custody, power, or control said minutes may be, requiring them to certify to this court a full, true, and perfect transcript of said minutes, &c.

JNO. C. ENO.

Sworn to before me this 8th day of March, 1893.

CHARLES H. BECKETT,

Notary Public, N. Y. Co.

Endorsed: U. S. circuit court. *Ex parte* John C. Eno. Affidavit and petition for leave to amend petition for *habeas* —. George Bliss,

attorney for petitioner, 160 Broadway, New York city. U. S. circuit court. Filed Mar. 27, 1893. John A. Shields, clerk.

31 U. S. Circuit Court.

In the Matter of the Petition of JOHN C. ENO for a Writ of *Habeas Corpus*.

WALLACE, *C. J.*:

The petitioner, who is in the custody of the warden of the city prisons of New York under bench warrants issued upon indictments preferred in the court of general sessions of that city, seeks by this proceeding in *habeas corpus* to procure his discharge upon the ground that the State court is without jurisdiction to entertain the offences for which he has been indicted, and that jurisdiction thereof is exclusively vested in the courts of the United States. The indictments are five in number, and charge Eno with acts which are made criminal and defined as forgery, some in the second degree and the others in the third degree, by sections 511 and 515 of the Penal Code of the State of New York, enacted in 1881. These acts were committed while Eno was an officer of a national banking association—the Second National Bank of the City of New York—and they consist in the making by him of certain false entries in the books of the banking association with intent to deceive.

32 Such acts are offences against the laws of the United States, previously enacted, commonly known as the national banking act, and embodied in the revision of the statutes of the United States in 1874. Section 5209 of the Revised Statutes of the United States declares that every officer of a national banking association who makes any false entry in any book of the association with intent to injure or defraud the association or any other company, body politic or corporate, or any individual person shall be deemed guilty of a misdemeanor and shall be imprisoned not less than five years or more than ten.

It is not disputed that jurisdiction to punish these acts as crimes against the United States is vested by the laws of Congress in the courts of the United States, but it is contended in behalf of the State authorities that the State court has also jurisdiction, because the acts are as well offences against the people of the State.

National banking associations are the creatures of the legislation of the United States, and it cannot be doubted that the power resides exclusively in Congress to prescribe what acts may or may not be done by their officers in conducting their operations and what shall be lawful and what unlawful, and, having prescribed what acts shall be unlawful, to declare what penalties and punishments therefor shall be visited upon the offender. The laws of Congress over the subjects legitimately within the sphere of their

33 authority by the Constitution are the paramount law of the land, and are necessarily exclusive of all State legislation inconsistent with them. Upon this principle it was adjudged in Farmers' Nat. Bank *vs.* Deering (91 U. S., 29) that, Congress having prescribed a forfeiture for the taking of unlawful interest by a na-

tional bank, no other penalty created by the usury laws of a State could be enforced.

The question has frequently arisen whether in the case of an offence not exclusively cognizable by the Federal courts, but punishable by the laws of Congress, which is also an offence at common law, the State courts can exercise a concurrent jurisdiction with the courts of the United States, and it is well settled that they can. On the other hand, it is settled by a great preponderance of authority that, when the offence is created by the laws of Congress and jurisdiction over it is expressly or by necessary implication vested exclusively in the courts of the United States, the State laws and State courts cannot touch it, although it may also be an offence against the State.

No useful purpose will be subserved by a citation and analysis of the numerous adjudications upon these questions in State and Federal courts. Some of them, however, may be referred to in which the offenses under consideration were acts made criminal by the laws of Congress relating to national banking associations. In People *vs.* Fonda, 52 Mich., 401, it was held by the supreme court of Michigan that the State courts had no jurisdiction of the crime of embezzlement or larceny by a clerk of a national
34 bank, for the reason that such offence is covered by section 5209 of the Revised Statutes of the United States, and jurisdiction of it is conferred upon courts of the United States by section 711 of those statutes. In Commonwealth *vs.* Felton, 101 Mass., 204, the supreme court of Massachusetts held that a person charged with being an accessory to an embezzlement by an officer of a national bank could not be convicted, because the provisions of the national banking act covered the crime imputed to the principal offender, and the courts of the United States were vested with the exclusive cognizance of that crime. In the case of Cross *vs.* North Carolina, 132 U. S., 131, the supreme court affirmed the validity of the conviction in a State court of a person indicted for forging a promissory note made payable at a national bank, placing the decision upon the ground that the forging of such a note was not an offence under the national banking laws. The court said: "If it were competent for Congress to give exclusive jurisdiction to the courts of the United States of the crime of falsely making or forging promissory notes purporting to be executed by individuals and made payable to or at a national bank or of the crime of uttering or publishing as true any such falsely made or forged notes, it has not done so. Its legislation does not assume to restrict the authority, which the States have always exercised, of punishing in their own tribunals the crime of forging promissory notes
35 and other commercial securities executed by private persons and used for purposes of private business."

Not only are the acts for which the petitioner is under indictment in the State court created offenses by the laws of Congress and their punishment defined thereby, but they are offenses exclusively cognizable by the courts of the United States by force of section 711 of Revised Statutes of 1874. That section provides that

the jurisdiction vested in the courts of the United States "of all crimes and offenses cognizable under the laws of the United States shall be exclusive of the courts of the several States." By section 5328 a large class of offenses cognizable by the courts of the United States are withdrawn from the operation of section 711; but offenses arising under the laws relative to national banking associations are not enumerated as within the exception.

The conclusion seems inevitable that the offenses for which the petitioner has been indicted are exclusively cognizable by the courts of the United States. It is proper to say that if any serious doubt were entertained as to the want of jurisdiction of the court of general sessions of the city of New York and its consequent want of authority to retain the petitioner in custody such a disposition of the present proceeding would be made as would permit that question to be raised, in the event of a conviction upon the indictment, after a trial. As it is, however, the petitioner is entitled to
36 be discharged from custody.

Endorsed: U. S. circuit court. In the matter of the petition of John C. Eno for a writ of *habeas corpus*. Wallace, C. J. U. S. circuit court. Filed March 27, 1893. John A. Shields, clerk.

37 At a stated term of the circuit court of the United States for the southern district of New York, held in the United States court building, in the city of New York, on the third day of April, 1893.

Present: Hon. William J. Wallace, circuit judge.

In the Matter of the Petition of JOHN C. ENO for a Writ of *Habeas Corpus*.

Upon the reading and filing the petition of John C. Eno, verified February 21, 1893, and the amended and supplemental petition, verified March —, 1893, and the writ heretofore issued herein, and the return of John Falion, warden of the city prison of the city of New York, and after hearing George Bliss, Esq., of counsel for petitioner, in support of said petition and said amended petition, and De Lancey Nichol, Esq., district attorney for the county of New York, in opposition thereto, and on motion of said George Bliss, Esq., it is—

Ordered that said original petition be amended so as to be addressed to this court and said amended and supplemental
38 petition be filed in addition thereto, and that said writ be, and hereby is, made returnable into this court; that said amendment of said petition, be, and is hereby, allowed *nunc pro tunc* as of the 21st day of February, 1893; and it is further ordered that said petitioner, John C. Eno be, and he is hereby, discharged from all manner of restraint by reason of each, all, and every of the matters and things in said petition and the amendment thereto and the said return thereto alleged.

WM. J. WALLACE.

(Endorsed:) *In re* Eno. Order discharging petitioner. Bliss & Schley, attorneys for —, 160 Broadway, New York city. U. S circuit court. Filed Apr. 3, 1893.

John A. Shields, clerk.

SIR: Please take notice that an order, of which the within is a copy, was duly entered in the office of the clerk of the — on the — day of ——, 189–.

Yours truly,

BLISS & SCHLEY,
Attorneys for —, 160 Broadway, New York.

SIR: Please to take notice that an order, of which the within is a copy, will be presented to Hon. W. J. Wallace, at his chambers, in the U. S. post office, in the city of New York, on April 3, 1893, at 10½ o'clock a. m.

BLISS & SCHLEY,
Att'ys for Petitioner.

March 29, 1893.

39 Supreme Court of the United States.

In the Matter of the Petition of JOHN C. ENO for a Writ of *Habeas Corpus.*

Afterwards, to wit, on the 16th day of November, 1893, at the October term for 1893 of the Supreme Court of the United States, at the Capitol, in the city of Washington, District of Columbia, come The People of the State of New York, the appellants herein, by De Lancey Nicoll, Esquire, district attorney for the city and county of New York, in the State of New York, and say that in the record and proceedings in the above-entitled matter there is manifest error, in *that*, to wit:

First. That the court of general sessions of the peace in and for the city and county of New York is a criminal court of general jurisdiction in said State of New York and has jurisdiction to try the indictments under which the relator was placed in the custody of the warden of the city prison of the city of New York, to be discharged from which custody the relator has applied for a writ of *habeas corpus* herein.

Second. That the said court of general sessions has con-
40 current jurisdiction with the Federal courts to entertain the offenses for which the said indictments were found.

Third. That in so far as section 711 of the Revised Statutes of the United States or section 629 of said statutes or any other statute purport to oust the State courts of their jurisdiction for such offenses as those for which the said indictments were found, the said section 711 or the said section 629 or any other Federal statute purporting to have such effect *are* unconstitutional and in contravention of the Constitution of the United States and *are* therefore void and of no effect.

Fourth. That neither section 711 of the Revised Statutes nor any other Federal statute *were* intended by the Congress of the United

States to oust the State courts of their jurisdiction for such offenses as those upon which the said indictments were found.

Fifth. That the offenses for which the said indictments were found are crimes against the people of the State of New York under the provisions of the penal code of the State of New York and are, as such, cognizable in the said court of general sessions.

Sixth. That the circuit court of the United States for the southern district of New York erred in discharging the relator, John C. Eno, upon the return of the writ of *habeas corpus* herein.

Wherefore The People of the State of New York, by De Lancey Nicoll, Esquire, district attorney of the city and county of
41 New York, of the State of New York, pray that the order of the said circuit court of the United States for the sonthern district of New York discharging the said relator, John C. Eno, be reversed, and that the said circuit court of the United States for the southern district of New York be ordered to enter an order dismissing the writ of *habeas corpus* herein and remanding the relator to the custody of the warden of the city prison of the city of New York.

DE LANCEY NICOLL,
District Attorney, Attorney for Appellants,
32 *Chambers St., N. Y. City.*

Endorsed: Supreme Court of the United States. In the matter of the petition of John C. Eno for a writ of *habeas corpus.* Original. Assignment of errors. De Lancey Nicoll, district attorney, for appellants, 32 Chambers St., N. Y. city. U. S. circuit court. Filed Oct. 20, 1893. John A. Shields, clerk.

42 Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of JOHN C. ENO for a Writ of *Habeas Corpus.*

The People of the State of New York, the appellants herein, conceiving themselves aggrieved by the order entered the 3rd day of April, 1893, in the above-entitled proceeding, do hereby appeal from the said order to the Supreme Court of the United States, and pray that this their appeal may be aliowed and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

New York, September 18, 1893.

DE LANCEY NICOLL,
District Attorney for the City and County of New York, for Appellants, 32 *Chambers St., New York City.*

And now, to wit, on the 19th day September, 1893, it is—
Ordered that the appeal may be allowed as prayed for.

E. HENRY LACOMBE.

(Endorsed :) Circuit court of the U. S. for the southern district of New York. In the matter of the petition of John C. Eno
43 for a writ of *habeas corpus*. Original. Appeal. De Lancey Nicoll, district attorney, for appellants, 32 Chambers St., N. Y. city. Service of a true copy of within appeal is hereby admitted. Dated N. Y., Oct. —, 1893. Bliss & Schley, U. S. circuit court. Filed Oct. 23, 1893. John A. Shields, clerk.

44 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

In the Matter of the Application of JOHN C. ENO for a Writ of *Habeas Corpus*.

Know all men by these presents that we, Delancey Nicoll, residing at No. 123 East 38th street, in the city, county, and State of New York, and Bartow S. Weeks, residing at No. 260 West 57th street, in the city, county, & State of New York, are held and firmly bound unto the above-named John C. Eno, the relator and respondent herein, in the sum of five hundred dollars, to be paid to the said the obligee; for payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of October, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas The People of the State of New York, the appellants herein, have prosecuted an appeal to the Supreme Court of the United States to reverse the order rendered in the above-entitled suit by the circuit court of the United States for the southern
45 district of New York, entered on the 3rd day of April, 1893:

Now, therefore, the condition of this obligation is such that if the above-named appellants, The People of the State of New York, shall prosecute said appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

DELANCEY NICOLL. [L. S.]
BARTOW WEEKS. [L. S.]

Sealed and delivered and taken and acknowledged this 28th day of October, 1893.

GEO. GORDON BATTLE.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } *ss:*

Delancey Nicoll, being duly sworn, says that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

DELANCEY NICOLL.

Sworn to before me this 28th day of October, 1893.
GEO. GORDON BATTLE,
Notary Public, City & County of New York.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

Bartow S. Weeks, being duly sworn, says that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

BARTOW WEEKS.

Sworn to before me this 25th day of October, 1893.
GEO. GORDON BATTLE,
Notary Public, City & Co. of N. Y.

46 UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

On this 2nd day of October, one thousand eight hundred and ninety-three, before me personally came De Lancey Nicoll & Bartow S. Weeks, to me known and known to me to be *and* individuals mentioned and described in the foregoing instrument, and they severally acknowledged to me that they executed the same.
GEO. GORDON BATTLE,
Notary Public, City & County of New York.

Endorsed: Circuit court U. S. of America, southern district of New York, second circuit. In the matter of the application of John C. Eno for a writ of *habeas corpus*. Original. Bond for damages and costs. De Lancey Nicoll, district attorney, 32 Chambers St., N. Y. city. Approved. Dated Oct. 20, 1893. E. Henry Lacombe. U. S. circuit court. Filed Oct. 20, 1893. John A. Shields, clerk.

47 At a stated term of the circuit court of the United States for the southern district of New York, held in the post-office building, in the city, county, and State of New York, on the 20th day of October, 1893.

Present: Hon. E. Henry Lacombe, judge.

In the Matter of the Petition of JOHN C. ENO for a Writ of *Habeas Corpus*.

Upon all the proceedings herein in accordance with section 765 of the Revised Statutes of the United States it is—

Ordered that a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings herein be sent up to the United States Supreme Court by the clerk of this court on or before the

16th day of November, 1893, and that said day —, and the same hereby is, made the return day of the appeal allowed herein.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Endorsed: Circuit court of the U. S. for the southern district of New York. In the matter of the petition of John C. Eno
48 for a writ of *habeas corpus*. Original. Order. De Lancey Nicoll, district attorney, for appellants, 32 Chambers St., N. Y. city. U. S. circuit court. Filed Oct. 20, 1893. John A. Shields, clerk.

49 UNITED STATES OF AMERICA, *ss:*

To John C. Eno, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at Washington on the 16th day of November, eighteen hundred and ninety-three, pursuant to an appeal taken, allowed, and filed in the clerk's office of the circuit court of the United States for the southern district —, wherein The People of the State of New York are appellants and John C. Eno, the relator herein, is respondent, to show cause, if any there be, why an order in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit of the United States, this 20th day of October, one thousand eight hundred and ninety-three.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Endorsed: Circuit court of the U. S. for the southern district of New York. In the matter of the petition of John C. Eno for a writ of *habeas corpus*. Original. Citation. De Lancey Nicoll, district attorney, for appellants, 32 Chambers St., N. Y. city. Service of a true copy of within citation is hereby admitted. Dated N. Y., Oct., 1893. Bliss & Schley. U. S. circuit court. Filed Oct. 23,
50 1893. John A. Shields, clerk. Oct., 1893. Bliss & Schley. 15 p'd. U. S. circuit court. Filed Oct. 28, 1893. John A. Shields, clerk.

51 UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to fifty (50), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the

petition of John C. Eno for a writ of *habeas corpus* as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourteenth day of November, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the said United States the one hundred and eighteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk*.

Endorsed on cover: Case No. 15,447. S. New York C. C. U. S. Term No., 1063. The People of the State of New York, appellants, vs. John C. Eno. Filed November 18th, 1893.

In the Supreme Court of the United States,

OCTOBER TERM, 1894.

THE PEOPLE OF THE STATE OF NEW YORK, Appellants, *vs.* JOHN C. ENO.	No. 602.

Brief and Points for the Appellants.

STATEMENT.

This is an appeal from an order of the Circuit Court of the United States for the Southern District of New York entered April 3, 1893, granting the application of the appellee for a writ of *habeas corpus*, and ordering his discharge (pp. 37–38, 42–50 of record).

In June, 1884, six separate indictments were found against the appellee in the Court of General Sessions of the Peace in and for the City and County of New York. By one indictment he was charged with the crime of forgery in the first degree, and by the others he was charged with forgery in the second and third degrees.

In February, 1893, the appellee gave bail to answer the indictment for forgery in the first degree, and upon

the others was committed to the custody of the warden and keeper of the City Prison of the City of New York.

The indictments for the latter offenses are those upon which the questions involved upon this appeal arise. They are based upon the provisions of sections 511 and 515 of the Penal Code of the State of New York.

Section 511, so far as it is applicable to this case, is as follows:

"A person is guilty of forgery in the second degree, who, with intent to defraud, * * * forges * * * an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation whereby any pecuniary obligation, claim or credit is or purports to be created, increased, diminished, discharged or in any manner affected."

Section 515, so far as it is applicable to this case, is as follows:

"A person, who, with intent to defraud, or to conceal any larceny or misappropriation by any person of any money or property, either (1) alters, * * * any account, book of accounts, record or writing belonging to or appertaining to the business of a corporation, * * * or (2) makes a false entry in any such account or book of accounts; * * * is guilty of forgery in the third degree."

Forgery in the second degree is punishable by imprisonment for a term not exceeding ten years (Penal Code, § 524), and forgery in the third degree by imprisonment for not more than five years (Ibid, § 525).

The indictments charge the various offenses to have been committed at a place within the territorial jurisdiction of the state, namely, at the First Ward of the City of New York, in the County of New York, and allege five separate offenses, committed May 5, 1884; October 18, 1884; January 16, 1884; February 12, 1884, and May 13, 1884, respectively. One of the indictments contains three counts, and charges as follows (pp. 14–17):

First Count—The forgery May 5, 1884, of an entry in a book of accounts "known as the Demand Loans book, kept by a certain corporation duly organized and existing under and by virtue of the laws of the United States of America, and doing business within the State of New York * * * and known as the Second National Bank of the City of New York," whereby a claim against a certain copartnership purported to be created with intent to defraud (§511).

Second Count—The same act charged as the making of a false entry, with intent to defraud, under section 515.

Third Count—The same act charged as the making of a false entry, with intent to conceal a misappropriation, etc., under section 515.

Each of the other four indictments contains two counts, and each alleges a different offense, in the following form (pp. 6–9, 10–13, 18–21, 22–25):

First Count—The making of false entries at a time specified in the same book, with intent to defraud and to conceal a misappropriation under section 515.

Second Count—Forging a book of accounts, viz., the same book, by fraudulently making the same false entries therein set forth in the first count (§511).

Having given bail to answer trial upon the indictment for forgery in the first degree, as above stated, the appellee made application to the Circuit Court for a writ of *habeas corpus* (pp. 1, 2), and there contended that the acts specified in the indictment being alleged to have been committed while he was an officer of a national banking association, the state of New York has no jurisdiction to prosecute the same, exclusive jurisdiction in respect thereto being vested in the Courts of the United States by virtue of the provisions of the federal laws.

The provisions of law upon which this contention is based are sections 629, 711 and 5209 of the United States Revised Statutes.

Section 5209 provides for the punishment of certain acts in violation of the National Banking Law, and, so far as applies to the case at bar, is as follows:

"Every president, director, cashier, teller, clerk or agent of any association who embezzles, abstracts or wilfully misapplies any of the money, funds or credits of the association * * * or * * * who makes any false entry in any book, report or statement of the association, with intent in either case to injure or defraud the association or any other company, body, politic or corporate, or any individual person, or to deceive an officer of an association, or any agent appointed to examine the affairs of any such association * * * shall be deemed guilty of a misdemeanor," etc.

Section 629 (sub. 20), declares that the Circuit Courts of the United States shall have "exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it may be otherwise provided by law."

By section 711 it is provided that "the jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several states.

"*First*—Of all crimes and offenses cognizable under the authority of the United States."

* * * * * * *

In view of these provisions of the federal law, it was argued on the part of the appellee that he is accused of acts made punishable under the provisions of of section 5209; that these acts constitute crimes and

offenses against the laws of the United States, which are expressly "cognizable under the authority of the United States," and that therefore by operation of section 711 jurisdiction of these crimes and offenses is exclusive of the courts of the several States, there being no provision of federal law bringing this case within the exception contained in section 629. In other words, that the State of New York has no authority to prosecute an officer of a national banking association for any act for which a prosecution could be instituted against him under §5209 of the United States Revised Statutes, notwithstanding that provision is apparently made for the punishment of such act by the laws of the state; and that under no view has the state court jurisdiction to entertain an indictment charging the acts set forth in the indictments herein.

The Circuit Court adopted this view, as appears by the opinion of Mr. Justice Wallace (pp. 31–36).

The State of New York maintains that error was committed in the appellee's discharge. Its contention is that the acts charged against the appellee are offenses against its peace and dignity which it has a right to punish; that there is no power in the government of the United States to interfere with the exercise of its jurisdiction in respect thereto; that the federal statutes upon the subject are not to be construed as intending such interference; and if so construed are clearly beyond the power of Congress, and therefore void.

The assignments of error specify (pp. 39–41):

First—That the Court of General Sessions of the Peace * * * is a criminal court of general jurisdiction in said State of New York, and has jurisdiction to try the indictments under which the appellee was placed in the custody of the Warden of the City Prison

of the City of New York, and from which custody he was discharged by the Circuit Court.

Second—That the said Court of General Sessions has concurrent jurisdiction with the federal courts to entertain the offenses for which the said indictments were found.

Third—That in so far as sections 629 or 711 of the Revised Statutes of the United States, or any other statute, purports to oust the state courts of their jurisdiction over such offenses as those for which the indictments were found, such enactments are in contravention of the constitution of the United States, and are therefore void.

Fourth—That neither section 711 of the Revised Statutes nor any other federal statute was intended by the Congress of the United States to oust the state courts of their jurisdiction over such offenses as those upon which the said indictments were found.

Fifth—That the offenses for which the said indictments were found are crimes against the People of the State of New York, under the provisions of the Penal Code of the State of New York, and are, as such, cognizable in the said Court of General Sessions.

Sixth—That the Circuit Court erred in discharging the appellee.

First.

The State of New York is an independent sovereign power, possessed of all the rights and prerogatives of sovereignty except such as have been expressly granted

to the general government by the provisions of the federal constitution, and reserving all those not so granted.

As to its judicial power, and its penal laws, the government of the United States is as distinct a government as Great Britain, France, or either of the states are from each other.

U. S. *vs.* Campbell, 6 Hall's Law Journ., 113; s. c., II. Walsh's American Register (Phil., 1817), 332.
Prigg *vs.* Pennsylvania, 16 Pet. (U. S.), 627.
N. Y. *vs.* Miln, 11 Pet. (U. S.), 138.

The states of the Union, although united as one nation for certain specified purposes, are yet, so far as concerns their internal government, separate sovereignties, independent of each other.

Kentucky *vs.* Dennison, 24 How., 66.

Sovereignty for the protection of rights and immunities created by or dependent upon the federal constitution, rests with the United States.

U. S. *vs.* Reese, 92 U. S., 214.

But sovereignty for the protection of the rights of life and personal liberty within the respective States rests with the states, subject only to the expressed qualifications of the constitution.

U. S. *vs.* Cruikshank, 92 U. S., 542.

And the states are to be considered with respect to each other, and to the federal government, as independent sovereignties, possessing power completely adequate to their own government in the exercise of which they are limited only by the nature and objects of government by their respective constitutions, and by that of the federal constitution, and crimes committed

within the limits of each are punishable only by the state where they arise.

Prigg *vs.* Pennsylvania (*supra*).
New York *vs.* Miln (*supra*).
Hoke *vs.* People, 13 N. E. Rep., 823.
Moore *vs.* Illinois, 14 Hun (U. S.), 13.
McIlvaine *vs.* Coxe's Lessee, 4 Cranch, 209.
Inglis *vs.* Trustees, etc., 3 Peters, 99.
State *vs.* Knight, Taylor's Rep., 65.
State *vs.* Chapin, 17 Ark., 561.
State *vs.* Carter, 3 Dutcher (N. J.), 499.

Second.

The states, through the exercise of their police power, which is the foundation of all criminal law in all civilized governments, "conducive to safety and consequent happiness to the people,"

State *vs.* Noyes, 47 Me., 189, 211.

and which is an "inherent and plenary power in the state,"

Lake View *vs.* Rose Hill Cemetery Co., 70 Ill., 191.

have the right to make and enforce laws, not violative of their own constitutions or that of the United States, for the comfort, safety and welfare of society.

Moore *vs.* Illinois, 14 How. (U. S.), 13.
Stone *vs.* Miss., 101 U. S., 814.
Com. *vs.* Alger, 61 Mass. (7 Cush.), 53.
People *vs.* King, 110 N. Y., 418, 423.
Hoke *vs.* People, 13 N. E. Rep., 823.
Prigg *vs.* Pennsylvania, 16 Pet. (U. S.), 627.
New York *vs.* Miln, 11 Pet. (U. S.), 138.

Third.

This right and power the State of New York has reserved unto itself. There is no grant in the federal constitution giving Congress the right to take cognizance of or to punish a wrong against the state. Its police power has never been conceded to the United States.

Prigg *vs.* Pennsylvania (*supra*).

In New York *vs.* Miln (*supra*), it was said that "all those powers which relate to merely municipal legislation or what may, perhaps, be more properly called *internal police*, are not thus surrendered or restrained; and that consequently, in relation to these the authority of the state is complete, unqualified and exclusive."

In U. S. *vs.* Bevans, 3 Wheat., 386, criminal jurisdiction over the territorial waters of the State of Massachusetts was attempted to be exercised by a federal court under the grant of admiralty and maritime jurisdiction in the federal constitution.

Said Chief Justice Marshall (at p. 388):

"Can the concession of all cases of admiralty and maritime jurisdiction be construed into a cession of the waters on which those cases may arise?

"This is a question on which the court is incapable of feeling a doubt. The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction. It is obviously designed for other purposes. It is in the 8th section of the 2d article we are to look for cessions of territory and of exclusive jurisdiction. Congress has power to exercise exclusive jurisdiction over this district, and over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings.

"It is observable that the power of exclusive legislation (which is jurisdiction) is united with cession of territory, which

is to be the free act of the states. It is difficult to compare the two sections together without feeling a conviction not to be strengthened by any commentary on them that, in describing the judicial power, the framers of our constitution had not in view any cession of territory, or which is essentially the same, of general jurisdiction. It is not questioned that whatever may be necessary to the full and unlimited exercise of admiralty and maritime jurisdiction is in the government of the union. Congress may pass all laws which are necessary and proper for giving the most complete effect to this power. Still, the general jurisdiction over the place subject to the grant of power adheres to the territory as a portion of sovereignty not yet given away."

In Smith *vs.* Maryland, 10 How. (U. S.), page 71, it was held that the state has a right to protect its fisheries and to inflict a penalty of forfeiture upon the vessel employed in the pursuit, although enrolled and licensed in the coasting trade under an Act of Congress.

Said the learned court (p. 76):

"It was also suggested that it is repugnant to the second section of the third article which declares that the judicial power of the United States shall extend to all c.ses of admiralty and maritime jurisdiction; but we consider it to have been settled by this court in United States *vs.* Bevens, 3 Wheat., 386, that this clause in the Constitution did not affect the jurisdiction nor the legislative power of the state over so much of their territory that lies below high-water mark, save that they parted with the power so to legislate as to conflict with the admiralty jurisdiction or laws of the United States."

In Moore *vs.* Illinois, 14 How. (U. S.), 13, it was held that a state under its general and admitted power to define and punish offenses against its own peace and policy, may repel from its borders an unacceptable population, etc., and that it is no objection to such legislation that the offender may be liable to punishment under the laws of Congress for the same acts.

Says the court (p. 18):

"It prescribes a rule of conduct for the citizens of Illinois. It is but the exercise of the power which every state is admitted to possess, of defining offenses and punishing offenders against its

laws. The power to make municipal regulations for the restraint and punishment of crime, for the preservation of health and morals of her citizens, and of the public peace, has never been surrendered by the state, or restrained by the constitution of the United States."

In United States *vs.* Reese, 92 U. S., 215, in which the Supreme Court, while conceding that rights and immunities created by or dependent upon the federal constitution could be protected by Congress, held that in the enactment of sections 3 and 4 of the Act of May 31, 1870, Congress had gone beyond the limit of the Fifteenth Amendment, and that the act was therefore unconstitutional, it was said (Chief Justice Waite delivering the opinion of the Court):

"Within its legitimate sphere Congress is supreme and beyond the control of the courts; but if it steps outside of its constitutional limitation and attempts that which is beyond its reach, the courts are authorized to and when called upon in due course of legal proceedings must, annul its encroachments upon the reserved power of the states and people."

Since, therefore, the Constitution confers upon Congress only the power to punish crimes against the United States; and since the acts charged against the appellee herein constitute offenses which the state in its sovereign power has a right to punish, a right which it has never granted to the federal government, and which is, therefore, expressly reserved to the state of New York, it necessarily follows that as to such acts, within the range in which the state may properly regard them as wrongs against the state, and legitimate subjects of her penal legislation, Congress has no power to oust the state of its jurisdiction in respect thereto.

Fourth.

The offenses charged against the appellee are directly and essentially wrongs against the state.

Surely the making of a false and fraudulent entry upon the books of a national bank is no less a crime against the people of the state and no less a proper subject of its penal condemnation than if the bank were a state bank. The national bank is located in the state of New York. Its stockholders and depositors are usually citizens of the state. A false and fraudulent entry in its books is a crime against the depositors and stockholders.

State *vs.* Tuller, 34 Conn., 280.
Hoke *vs.* People, 13 N. E. Rep., 823.

It will scarcely be argued that the state has not the right, in ordinary cases, to punish the fraudulent making of false entries in books of account. If so it is certainly immaterial, so far as the nature of the act is concerned, whether the entries are made in a book of accounts of a municipal corporation, a corporation organized under the laws of New York state, or of another state or of a foreign country, or under the laws of the United States.

The state takes cognizance of the act, not because of the wrong done the real or artificial person whose books are falsified, but because of the wrong done the public.

It cannot be urged that while a wrong is done the state, or an injury to the public at large occasioned in the falsification of the books of a corporation organized under the laws of the state and doing business in the state, no wrong is done and no public injury is occasioned where the books are those of a corporation organized under the laws of the United States.

And, surely, the wrong is no different, whether the corporation is organized under the laws of Great Britain or the federal statutes of the United States.

As this court said, in speaking of the offense of forging notes, payable at a national bank :

"The forgery of such instruments is none the less injurious to the welfare of the people of a state because they happen to be made payable to or at banking associations which come into existence under the authority of the United States."

Cross *vs.* North Carolina, 132 U. S., 131.

The Supreme Court of Illinois, in upholding the jurisdiction of the state to prosecute under its laws acts of the same kind as are charged against the appellee, notwithstanding section 5209, said :

"The purpose of the former" (the federal statute) "seems to be for the protection of national banks ; * * * The state law is for the protection of the state from the perpetration of forgeries."

Hoke *vs.* People, 13 N. E. Rep., 823, 825.

And, upon the same principle, the right of the states to punish the coining and uttering of counterfeit money, breaches of the peace arising out of acts for which federal laws provided a punishment, and other transgressions affecting the good order of the state, has been consistently recognized and preserved, as appears by the cases hereinbelow cited.

It is immaterial *when* the New York statute was passed, provided the act thereby made punishable is a wrong which the State has a right to regard as an act injurious to its safety and welfare, and over which it may lawfully legislate.

Fifth.

The power of Congress to pass laws for the protection of corporations created by its laws and existing only by its sovereign will, and doing business upon the territory of the general government, against forgery, embezzlement, etc., is not denied; but it is to be recollected that the State also has the right to protect itself and its citizens, and thus the objects of the state law and of the federal laws are very different.

It is true that an officer of the bank who makes such false and fraudulent entries commits thereby a crime against the bank, and an offense cognizable in the federal courts. But that does not alter the fact that his act is also an offense against the People of the State.

In U. S. *vs.* Cruikshank, 92 U. S., 542, the Supreme Court thus describes the relative characteristics and powers of the federal and state Governments:

"The government thus established and defined is to some extent a government of the states in their political capacity. It is also, for certain purposes, a government of the people. Its powers are limited in number, but not in degree. Within the scope of the powers, as enumerated and defined, it is supreme and above the states; but beyond, it has no existence. It was erected for special purposes, and endowed with all the powers necessary for its own preservation and the accomplishment of the ends which the people had in view. The people of the United States resident within any state are subject to two governments: One state and the other national; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. Thus, if a marshal of the United States is unlawfully resisted while executing the process of the courts within a state, and the resistance is accom-

panied by an assault on the officer, the sovereignty of the United States is violated by the resistance, and that of the state by the breach of peace, in the assault. So, too, if one passes counterfeited coin of the United States within a state, it may be an offense against the United States and the state: The United States, because it discredits the coin; and the state, because of the fraud upon him whom it is passed. This does not, however, necessarily imply that the two governments possesses power in common, or bring them into conflict with each other. It is the natural consequence of the citizenship which owes allegiance to two sovereignties and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws."

The state of New York does not seek to prosecute the appellee herein for having violated section 5209 of the United States Revised Statutes, but for having committed a crime against its peace and dignity, a crime which affects its good order and repose, which it has a right as a sovereign power to punish, and which under its sovereign prerogative of administering justice and the express provisions of its Penal Code is made punishable in its courts.

Says Holt:

"In such cases the offender may be punished either in the United States court or in the state court having jurisdiction, but the proceedings in either tribunal must be based exclusively on the law of the sovereignty under which the tribunal sits, that is, the proceedings in the federal court must be based on the federal law, and those in the state court on the state's law."

Holt on Concurrent Jurisdiction, p. 26.

While, therefore, the federal government has power to take cognizance of the acts charged against the appellee, its action in reference thereto can in no way be opposed to that of the state. For certain purpose,

the acts are subject to federal cognizance. In others they are not.

The state has assumed to deal with them in a manner which in no way invades the jurisdiction of the United States, and the action of the state is entirely independent of, and has no relation to the aspect of the acts in which they are subjects of federal cognizance under the United States statutes.

Sixth.

The acts committed by the appellee render him guilty of two offenses, one a crime against the State, the other a crime against the United States.

In Cross *vs.* North Carolina, 132 U. S., 131, it was contended that where exclusive jurisdiction is vested in the courts of the United States to try an offense, the state court cannot exercise jurisdiction in respect to any act constituting an essential ingredient of that offense, although the commission of such act is made a crime against the state.

This court held that the crime of which Cross had been convicted was complete independent of any part it might have held in a contemplated violation of the federal statute. But the Court said further :

"The argument on behalf of the plaintiffs in error fails to give effect to the established doctrine that the same act or series of acts may constitute an offense equally against the United States and the state subjecting the guilty party to punishment under the laws of each goverment. This doctrine is illustrated in United States *vs.* Marigold, 9 How., 560, 569 ; Fox *vs.* Ohio, 5 How., 410, 433 ; Moore *vs.* Illinois, 14 How., 13 ; *ex parte* Siebold, 100 U. S., 371, 390. * * * If the punishment by the State of the crime of forgery, of which the defendants were found guilty,

leaves them exposed to punishment by the United States for having made false entries upon the books of the bank of which they were officers, with the intent to deceive the agent appointed by the general government to examine its affairs, it results from the fact that they are amenable to the laws of the United States as well as of the State of North Carolina, and may be subjected to punishment for violating the laws of each government."

Judge Harlan also quoted with approval the following proposition from U. S. *vs.* Marigold, 9 How., 560, 569:

"The same act might as to its character and tendencies and the consequences involved, constitute an offense against both the state and federal government, and might draw to its commission the penalties denounced by either as appropriate to its character in reference to each."

The twofold character of the crime is well pointed out in Hoke *vs.* People, N. E. Rep., 823, 825, a case in the Supreme Court of Illinois.

In that case the plaintiff in error had been convicted of forging a draft on a national bank and of making false and fraudulent entries in its books.

Said the Court (by Sheldon, *C. J.*):

"The objects of the United States law and the state law appear to be different. The purpose of the former seems to be for the protection of national banks; to punish breaches of trust on the part of those holding fiduciary relations toward such banks; to punish what is of the nature of a private crime. The state law is for the protection of the public against the public mischief to the public of the state from perpetration of forgeries."

The following remarks from the opinion of Judge Taney in U. S. *vs.* Amy, 14 Md., 149, 159; s. c., Richmond Law Journal, July, 1859, 163, are quoted in the opinion Jett *vs.* Virginia, 18 Gratt, 993:

"In maintaining this power of the United States to pass this law, it is, however, proper to say that as these letters with the money in them were stolen in Virginia, the party might undoubtedly have been punished in the State tribunals, according

to the laws of the state, without reference to the post-office or the act of Congress, because from the nature of our government the same act may be an offense against the laws of the United States and also of a state, and be punishable in both. This was considered and decided in the case of Fox *vs.* State of Ohio, 5 How. U. S. R., 410, and in the case of U. S. *vs.* Peter Marigold, 9 How. U. S. R., 560, and his punishment in one sovereignty is no bar to his punishment in the other."

Judge Joynes, in the case of Jett referred to, says:

"In the present case there is no express grant of exclusive jurisdiction to the United States. If, therefore, the states have lost their ancient jurisdiction over any offense of this class, it must be because jurisdiction over the offense has been given to the United States to which a like jurisdiction in the States would be wholly contradictory and repugnant. * * * Congress having, as must be assumed, authority to establish the system of national banks, had the authority to protect their circulation from being discredited by counterfeits, in order to secure the usefulness of the system. When, therefore, the forged note employed in effecting a cheat purports to be the note of a national bank, Congress has a right to declare the act of uttering or attempting to pass as true the forged note to be an offense against the United States, and has accordingly done so. Literally speaking, the act of Congress and the statute of the State punish the same identical act, namely, the act of uttering or attempting to pass as true the forged note. But the two statutes aim at the accomplishment of different objects, the authority under which they were enacted is derived from different sources, and though the offense which each of them punishes is comprised in one and the same act, there is really an essential difference in the character of the two offenses.

"There is nothing peculiar in respect to the law of the State, as to the offense now in question, to render the jurisdiction of the state courts under the law of the state incompatible with that of the federal courts under the act of Congress, if it would not be so upon general principles in all cases whatever. The law of the state is in entire harmony with the act of Congress, and seeks, though for different reasons and in pursuance of a different policy, to effect the same object, to wit, the suppression of counterfeits."

So also in Hendrick's case, 5 Leigh, 707, Judge Daniel says:

"It was urged that * * * it might happen that a man might be punished twice for the same offense. The answer to this is, that the law of Virginia punishes forgery, not because it is an offense against the United States, but because it is an offense against this commonwealth, committed within its limits, and the punishment of it is designed for the protection of its citizens."

In Houston *vs.* Moore, 5 Wheat., 1, while the Judges arrived at their conclusion by various courses of reasoning, they agreed that a statute of Pennsylvania providing that officers and privates of the militia of that State neglecting or refusing to serve when called into actual service in pursuance of any order or requisition of the President of the United States should be liable to the penalties defined in an act of Congress providing for the trials of such delinquents by court-martial, was not repugnant to the Constitution and laws of the United States. There is very much in the reasoning of the Court which is applicable here, but it will be sufficient to quote one passage from the opinion of Judge Johnson:

"Witness, also, the crime of robbing the mail, * * * which is unquestionably cognizable as highway robbery under the state laws, although made punishable under those of the United States."

In Fox *vs.* State of Ohio, 5 How., 434, Judge Daniel says:

"If within the power conferred by the clauses of the Constitution above quoted can be drawn the power to punish a private cheat effected by means of a base dollar, that power certainly cannot be deduced from either the common sense or the adjudicated language used in the Constitution, or from any apparent or probable conflict which might arise between the federal and state authorities, operating each upon these distinct characters of the offense."

Although the act is the same, the offenses are distinct, and there is no contradiction or repugnance between the jurisdiction claimed for one court and that admitted to apply to the other.

"With the view of avoiding conflict between the state and federal jurisdiction, this court, in the case of Fox *vs.* The State of Ohio, have taken care to point out that the same act might, as to its character and tendencies, and the consequences it involved, constitute an offense against both the state and federal governments, and might draw to its commission the penalties denounced by either as appropriate to its character in reference to each. We think this distinction sound, as we hold to be the entire doctrines laid down in the case above mentioned, and regard them as being in no wise in conflict with the conclusions adopted in the present case."

U. S. *vs.* Marigold, 9 How., 560–569.

In Moore *vs.* Illinois, 14 How. (U. S.), page 19, this court said:

"But admitting that the plaintiff in error may be liable to an action under the act of Congress for the same acts of harboring and preventing the owner from retaking his slave, it does not follow that he would be twice punished for the same offense. An offense, in its legal signification, means the transgression of a law. A man may be compelled to make reparation in damages to the injured party, and be liable also to punishment for a breach of the public peace, in consequence of the same act; and may be said, in common parlance, to be twice punished for the same offense. Every citizen of the United States is also a citizen of a state or territory. He may be said to owe the allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offense against the United States, for which the perpetrator is liable to punishment; and the same act may be also a gross breach of the peace of the state, a riot, assault, or a murder, and subject the same person to a punishment, under the state laws for a misdemeanor or felony. That either or both may (if they see fit) punish such an offender, cannot be doubted. Yet it cannot be truly averred that the offender has been twice

punished for the same offense but only that by one act he has committed two offenses, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other; consequently, this court has decided, in the case of Fox *vs.* The State of Ohio (5 How., 432), that a State may punish the offense of uttering or passing false coin, as a cheat or fraud practiced on its citizens; and in the case of the United States *vs.* Marigold (9 How., 560), that Congress, in the proper exercise of its authority, may punish the same act as an offense against the United States."

It is analogous to the well-settled rule that the violation of a city ordinance, if it be also a violation of a state statute, can be punished both by the city and by the state.

Blatchley *vs.* Moses, 15 Wend., 215.
Greenwood *vs.* State, 6 Baxt, 567.
State *vs.* Gordon, 60 Mo., 383.
Chicago, etc., Co. *vs.* Chicago, 88 Ill., 221.

The position assumed by this court in *In re* Neagle, 135 N. S., 1, is not adverse to the contention of the appellants herein. The question here presented was not there directly considered, the court basing its decision upon other grounds. The court held, upon a full examination of all the testimony, that Neagle, in the protection of the person and life of Mr. Justice Field while in the discharge of his official duties, was authorized to resist Terry's attack upon him; that he was correct in the belief that without prompt action on his part the assault of Terry would have resulted in the Judge's death, that he was therefore justified in taking Terry's life as the only means of preventing this result; that he was acting under authority of the federal law, and justified in so doing, and was not liable to answer in the courts of California.

In speaking of the objection made on the argument that Neagle was discharged by the writ from the power of the California court to try him for the whole offense.

Mr. Justice Miller, delivering the opinion of the court, said (p. 75):

"The reply is, that if the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, which it was his duty to do as marshal of the United States, and if in doing that act he did no more than what was necessary and proper for him to do, he cannot be guilty of a crime under the law of the state of California. When these things are shown it is established that he is innocent of any crime against the laws of the state or of any other authority whatever. There is no occasion for any further trial in the state court or in any court."

And Mr. Justice Lamar in concluding his dissenting opinion (concurred in by Mr. Chief Justice Fuller) said (p. 99):

"We are not unmindful of the fact that in the foregoing remarks we have not discussed the bearings of the decision upon the autonomy of the states, in divesting them of what was once regarded as their exclusive jurisdiction over crimes committed within their own territory, against their own laws, and in enabling a federal judge or court, by an order in a *habeas corpus* proceeding, to deprive a state of its power to maintain its own public order, or to protect the security of society and the lives of its own citizens, whenever the amenability to its courts of a federal officer or employee or agent is sought to be enforced. We have not entered upon that question, because, as arising here, its suggestion is sufficient, and its consideration might involve the extent to which legislation in that direction may constitutionally go, which could only be properly determined when directly presented by the record in a case before the court of adjudication."

Seventh.

There is no more conflict of jurisdiction between the state and federal courts in the enforcement of their respective rights of jurisdiction over the acts herein charged than must arise in cases wherein the same acts offend the laws of different sovereign powers.

It is beyond dispute that all sovereign nations may exercise penal jurisdiction in respect to acts committed abroad.

For the exercise of this right of punishing acts of its citizens regardless of the place of their commission, each state is answerable to itself alone, and no other state is competent to interfere.

Thus, France, Germany, Austria, Belgium, Hungary, Italy, Luxembourg, The Netherlands, Norway, Mexico, Portugal, Russia, Sweden, Greece, Brazil, Spain and Switzerland punish crimes against the safety of the State committed outside of their territory, whether by their own citizens or by foreigners, and their power to exercise this jurisdiction is not to be denied.

> Extraterritorial Crime and the Cutting Case, by John Bassett Moore, Third Assistant Secretary of State. Washington Government Printing Office, 1887. 38–51.

The laws of these, and of other nations provide for the punishment of many ordinary crimes against their laws committed by their own citizens outside of their territorial jurisdiction, and this upon the well-established principle that a nation may make its penal laws binding upon its citizens everywhere.

Thus, the French Code of Criminal Procedure provides:

"Every Frenchman who, outside of the territory of France, commits a *crime* punishable by the French law, may be prosecuted and judged in France.

"Every Frenchman who, outside of the territory of France, commits an act defined as a *délit* by the French law, may be prosecuted and judged in France, if the act is punishable by the legislation of the country where it was committed."

> Code d'Instruction Criminelle, Dispositions Preliminaires, Art. 5.

The Penal Code of the German Empire of May 15, 1871, as modified by the law of February 26, 1876, provides:

"*Crimes* and *délits* committed in a foreign country are not, as a rule, subjected to any prosecution. There can, however, be prosecuted according to the penal laws of the German Empire. * * * every *German* who is guilty in a foreign country of an act defined as a *crime* or *délit* by the laws of the German Empire, and punishable according to the laws of the place where it was committed."

Part I., chapter 2 of the Penal Code of Austria, of the 27th of May, 1852, contains the following provision:

"§ 36. The subject of the Empire of Austria who has committed a crime in a foreign country, cannot, on his arrival in his own country, be surrendered to that foreign country; but he shall be treated conformably to the present Penal Code, without regard to the laws of the country where the crime was committed."

The laws of Belgium upon the subject are substantially the same as those of France.

Extraterritorial Crime and the Cutting Case (*supra*).

By the Penal Code of Denmark, a Danish subject who, abroad—

"shall have * * * failed in any manner to perform any of the duties of loyalty and obedience to which he is held as a subject," is "considered as having infringed the penal laws of the Kingdom."

Danish Penal Code, § 4 and § 5.

And, when outside of certain cases enumerated, a Danish subject shall have committed a *délit* in a foreign state—

"the Minister of Justice is authorized to prosecute him in the Kingdom."

Id., § 6.

The subjects of Great Britain are punishable who have committed, either as principals or accessories, in a foreign territory, or in the colonies, murder or manslaughter, whether against an Englishman or a foreigner, or offenses against the Enlistment Act, and the Merchant Shipping Act of 1854 makes provision for the punishment of the master, seaman or apprentice of a British ship, *who, at any place out of Her Majesty's dominions, commits an offense against persons or property.*

The laws of Italy, Hungary, Luxembourg, Holland, Norway, Portugal, Russia, Sweden, Greece, Brazil, Spain and Switzerland contain similar provisions.

Extraterritorial Crime and the Cutting Case (*supra*), pp. 38–51.

The United States has provided for the punishment of offenses against its laws committed abroad.

Thus, in 1799, an act was passed by Congress, the provisions of which are now substantially embodied in section 5335 of the Revised Statutes, which is as follows:

"Every citizen of the United States, whether actually resident or abiding within the same, or in any foreign country, who, without the permission or authority of the government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government," etc., shall be punished, etc.

The act was popularly known as the "Logan" statute, after the person by whose informal diplomatic enterprise its enactment was suggested.

See—

Lawrence's Wheaton (Ed., 1863), 1003.
Wharton's Int. L. Dig., § 109.
Wharton's St. Tr., 20, 21.

This statute is clearly within the constitutional power of Congress, and provides for the punishment of an offense cognizable under the laws of the United States, exclusive jurisdiction over which is vested in the courts of the United States. It would be as fair an argument as that presented by this appellee to contend that an act in violation of 5335 could not be punished in the place of its commission as a crime against the government of that place, because it also constituted a violation of the laws of the United States. The government of the United States has no more power over ordinary offenses, committed within the territorial limits of the states, than a foreign government. Its jurisdiction is identical, in this respect, with that possessed by other nations, and it is based upon its right to punish crimes against its sovereignty in violation of its laws. It is dependent upon the character and effect of the acts, regardless of the place of their commission.

While we have seen that no foreign power has a right to punish an act committed within the territorial limits of the state of New York, because of its being a wrong against the state of New York, it would yet be competent to punish that same act in its own courts as an offense, under its laws, if the act was, in fact, an offense against its sovereignty.

Thus, a citizen of France, who should commit a burglary in the city of New York, would be guilty of a violation of the French Code of Criminal Procedure, for which he could be "prosecuted and judged in France." But he would also be guilty of a violation of the laws of the state of New York, and liable to prosecution and punishment in its courts for the wrong his crime had done the state.

Moreover, if a Frenchman, employed as a clerk in a national banking association in the city of New York, should make false entries in the books of the bank, he

would, by the same act, violate the laws of, and commit crimes against, these separate sovereignties, viz.: the State of New York, the United States and the French Republic, and would be subject to prosecution under the laws of each; and it would be absurd to say that either New York or the United States could not punish him because his act was also a crime cognizable under the French law; yet, surely, the crime, arising out of his act, which would be thus cognizable under the French law, while exclusively cognizable in the courts of France, would have no relation to the crime against the State of New York or the United States, and either the state or federal authorities could exercise its jurisdiction in respect to that aspect of his crime which offended its laws.

The apparent conflict of jurisdiction arising upon these seemingly repugnant provisions of law, disappears when we consider the purpose of each, and the ground upon which the assertion of jurisdiction is based.

Foreign nations may punish acts committed within the territory of the United States or of the State of New York, when such acts constitute crimes against their peace or safety. But this right of prosecution in no way affects the right of the United States or of the State to punish the same acts when they also constitute crimes against the peace or safety of the federal government or of the state.

In like manner, the United States has power to punish certain acts which offend against the constitutional enactments of Congress, because those acts are thereby crimes against the federal government. But this jurisdiction over the acts which thereby become "cognizable" in the courts of the United States, in no way affects the right of the state to punish the same acts when they also constitute crimes against the state.

Eighth.

It cannot be urged that this principle violates the constitutional provision that "no person shall be subject for the same offense to be twice put in jeopardy of life or limb."

On this point this Court has said, by Bradley, *J.*:

"But the answer to this is that each government punishes violation of duty to itself only; where a party owns a duty to two sovereigns he is amenable to both for its performance, and either may call him to account. Whether punishment inflicted by another can be pleaded in bar to a charge by the other for the same identical act, need not now be decided, although considerable discussion bearing upon the subject has taken place in this Court, tending to the conclusion that such a plea cannot be sustained."

Ex parte Siebold, 100 U. S., 371.

Judge Taney took a merciful view of a possible situation requiring the exercise of jurisdiction by the federal court after the state had punished the offender under the state law. Said he:

"Yet, in all civilized countries, it is recognized as a fundamental principle of justice, that a man ought not to be punished twice for the same offense, and if this party had been punished for larceny in the state tribunal, the court would have felt it to be its duty to suspend sentence, and to represent the facts to the President to give him an opportunity of ordering a *nolle prosequi* or granting a pardon."

U. S. *vs.* Amy, 14 Md., 149.

A similar opportunity of discussion arises out of the power of independent nations to punish acts against their sovereignty committed in foreign jurisdiction.

Says Mr. Moore, in his "Report on Extraterritorial Crime and the Cutting Case" (*supra*):

"To quote the language of Sir George Cornwall Lewis, 'the system of tying the entire criminal law of a country round the neck of a subject, and of making him liable to its operation, in

whatever part of the world he may be, converts the criminal law into a personal statute, and puts it on the same footing as the law respecting civil status.'"

Foreign Jurisdiction and the Extradition of Criminals.

"The objection to this, as he states it, is that 'the personal statute of one country, in civil matters, is recognized by another. But if the criminal law were a personal statute, a foreigner would, at the same time, be subject to two criminal laws—the criminal law of his own state and that of the state of his domicile. No text-writer and no state disputes the rule that all foreigners in a country are subject to its criminal law. It is no answer to this cogent reasoning to say that the punishment of a citizen by the country in which the crime was committed would be a bar to his punishment at home for the same offense; for it may be very differently regarded by the two countries. The law of the sovereign of allegiance might punish it much more severely than the law of the country in which the offense was committed; and were the case reversed, the punishment of the criminal in his own country would either guarantee him immunity from a greater penalty justly incurred in the state where the offense was committed, should he return thereto, or, assuming that the former prosecution could not be set up as a bar, in the latter country, would leave him liable on such return to a second punishment for the same offense."

Extraterritorial Crime and The Cutting Case (*supra*), pp. 35–36.

While the difficulty referred to may exist, these remarks suggest a consideration of the obvious impropriety of one sovereign power attempting to arrogate to itself the exclusive right of punishing an act which, while violative of its laws, also wrongs another sovereign power.

Applying these considerations to the case at bar, it is easy to understand how a very troublesome condition would arise were the federal government to assume exclusive jurisdiction over the class of acts of which we speak.

Congress could provide a penalty for such acts which the state, from its view, might regard either as wholly inadequate or grossly excessive. The federal law punishing perjury at an election at which federal officers are voted for would exclude the operation of the state laws upon the subject at those elections, while at all other elections the state law would be in operation, and thus the same act of perjury if committed at an election held one year would be cognizable under the laws of the state; but if committed the following year, would be cognizable only under the federal laws.

The confusion such a situation would produce is manifest.

Ninth.

That Congress intended by the enactment of section 711 merely to declare the universal principle that one sovereign power has no right to enforce the penal laws of another sovereign power, is, we contend, clearly adducible from the history of Congressional legislation upon the subject.

By the original Judiciary Act (Act of September 24, 1789), section 11, which was the source of the present section 629, sub. 20), of the U. S. Revised Statutes, the Circuit Court was given exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where the act otherwise provided, or the laws of the United States should otherwise direct, and concurrent jurisdiction with the District Courts of the crimes and offenses cognizable therein.

This provision has been supposed by some to have operated as an implied recognition of the right of the

state courts, in pursuance of express authority of Congress, to prosecute offenses over which their jurisdiction would otherwise have been removed. That this view is unfounded in fact must appear by a consideration of the cases arising under the Act of 1789. Its real purpose, it is submitted, was to enable the federal government to commit to the state courts the jurisdiction to prosecute federal offenses, and to enforce in the state courts at its pleasure the penal statutes of the general government. The attempt was, however, futile. It was met with the assertion of the sovereignty of the states, and a declaration of the lack of power on the part of Congress to impose upon the states any duty of enforcing any portion of the judicial power of the United States in any criminal case whatever. This assertion was based upon the universally acknowledged principle that one sovereign power cannot execute the penal laws of another, as the laws of each are inoperative out of its own jurisdiction; that crimes under the laws of each are cognizable exclusively in the courts of the sovereignty enacting them, and that one sovereignty neither has a right to punish crimes against the laws of another sovereignty, nor is it under any obligation to take notice of them.

The Antelope, 10 Wheat. (U. S.), 66.
Scoville *vs.* Canfield, 14 Johns. (N. Y.) 338.
Peterson *vs.* Walsh, 1 Daly (N. Y.), 182.
State *vs.* Knight, Taylor's Rep. (N. C.), 65.
Com. *vs.* Green, 17 Mass., 515, 545–548.
Ogden *vs.* Folliott, 3 J. R., 733, 734.
Wolffe *vs.* Oxholme, 6 M. & S., 99.
Warrenden *vs.* Warrenden, 9 Bligh, 119, 120.
King of Two Sicilies *vs.* Willcox, 1 Sim. (N. S.), 310.

Thus there arose a long line of cases wherein the question was considered, and which resulted finally in settling, beyond all dispute, that Congress could not enforce its criminal laws in the state tribunals.

Under various acts of Congress, which authorized the bringing of prosecutions under federal penal laws in the state courts, attempts were made from time to time to impose this duty on the latter.

Thus in U. S. *vs.* Campbell, *supra*, decided in 1816, 6 Hall's Law Journ., 113; II. Walsh's Am. Reg. (Phil., 1817), 332, an information was filed, in an Ohio State Court, against Campbell, by the Collector of Revenue for the 6th Collection District of Ohio, for selling domestic-distilled spirits without a license, contrary to the act of Congress.

The defendant moved to quash the information, upon the ground that the offense charged was not an offense against the laws of Ohio, and that the state courts could not take jurisdiction of offenses against the United States.

Tappan, *J.*, in delivering the opinion of the Court, said:

"The first question will then be, can the United States prosecute for offenses against their laws in the state courts? This will depend upon the Constitution of the United States and the constitution of this state. The state of Ohio is a sovereign and independent state, not controllable by any earthly power in the making or administration of its laws, except only in such particulars as it hath delegated a portion of that sovereignty to the United States by the federal constitution, and as it hath limited itself in the exercise of power by the same constitution. The constitution of the United States creates a distinct and separate government from the several state governments, and delegates specific and limited powers to the government so created. * * * The judicial power of the United States extends to the case now before this court, and that power is wholly vested in the United States courts; the Supreme court of the United States

hath an appellate jurisdiction in all controversies to which the United S ates shall be a party; there is no clause in the Constitution of the United States which authorizes Congress to give jurisdiction to the state courts, or to require the performance of any judicial duties of them. * * * This is a criminal prosecution. It may well be doubted whether one sovereign state can sue in the municipal courts of another state; but, waiving this point, as not necessary to be here decided, I assume it to be a settled principle of jurisprudence that one sovereign state cannot make use of the municipal courts of another government to enforce its penal laws. No one would doubt for an instant, if the government of Great Britain, or France, or even one of the other states of the Union, were to attempt to maintain a criminal prosecution in our courts, that it would not be permitted; and yet as to its judicial power, and its penal laws, the government of the United States is as much an independent state and separate government as Great Britain, France, or either of the United States.

It hath been urged that the constitution gives to Congress the power to lay and collect taxes, duties, imposts, excises, etc., and to make all laws which shall be necessary and proper for carrying that power into execution; that to collect the excise they have judged it necessary to vest a jurisdiction in certain cases in the state courts. If they have judged it necessary, they have been mistaken; convenience is not necessity; their own tribunals are sufficient to enforce their laws.

If it be true that Congress under this provision of the Constitution may pass any laws they deem necessary to carry their specific powers into execution, and are the sole judges of such necessity, where are they to stop? Possessing the sword and the purse of the whole confederation, nothing more than the establishment of such a principle is wanting to vest Congress with absolute power and to effect a comple consolidation of the states.

We have seen that the constitution of the United States doth not give Congress the power of vesting jurisdiction in the state courts; the constitution and laws of the state of Ohio do not give us jurisdiction, nor can we sustain it on general principles of law.

An opinion has been read in which it is stated that the Third Article of the Constitution of the United States vests in the government of the United States a *privilege* of having their causes

determined in their own Court, and that this *privilege* may be waived by them. By the First Article of the constitution, the legislative powers of the United States are vested in Congress; by the Second, the executive power of the United States is vested in a president. I do not see why this doctrine of *privilege* and waiver may not with as much reason be applied to the legislative and executive as to the judicial power, and so the whole Government of the United States *waived*. This theory is new; it is beyond my comprehension."

In the same year Don Joseph Almeida was arrested on a charge of piracy, under the treaty with Spain, upon a warrant issued by a Justice of the Peace of the state of Maryland, under the Act of Congress of 1789. A *habeas corpus* was granted by Judge Bland, of the Baltimore County Court, and the case was argued in that court before Judges Bland and Hanson.

Among other objections raised on the part of the prisoner, it was urged that Congress had no power under the federal constitution to invest any state magistrate with any judicial authority under the laws of the United States, such judicial authority being confined by the constitution to the federal tribunals.

Both the judges concurred in supporting this objection and gave separate and elaborate opinions, discharging the prisoner.

12 Niles' W. Reg., 115, 213; 2 Walsh's American Register (Phil., 1817), 332.

So, where an action was brought in the Supreme Court of the State of New York to recover a penalty of one hundred and fifty dollars, under the act of Congress passed the 2d of August, 1813, entitled an act for laying duties on licenses to retailers of wines spirituous liquors and foreign merchandise, which authorized the suit to be brought in a court of that state, and the defendant pleaded to the jurisdiction of the court, the court determined in favor of the defend-

ant, holding that it was not competent to Congress to confer jurisdiction on the state courts, in criminal or penal cases arising under the law of the United States.

U. S. *vs.* Lathrop, 17 Johns., 5.

Where the defendant was indicted in a state court in Virginia, in the name of the Commonwealth, for stealing packets from the mail, it was determined that, as the offense was created by an act of Congress, a state court had no jurisdiction, although the act of Congress of 30th April, 1810, § 35, authorized such prosecutions in the state courts.

Com. *vs.* Freely, Virginia Cases, 321.

In another case where an action was brought in a court of the state of Virginia to recover a penalty inflicted by the act of Congress to insure the collection of the revenue of the United States, which penalty the act declared might be recovered in a state court, the case being adjourned to the General Court of Virginia, it was held that the act of Congress was, in this respect, unconstitutional, and to assume jurisdiction over the case would be to exercise a portion of the judicial power of the United States which by the constitution is deposited in other hands.

Jackson *vs.* Row, Nat. Intell., Dec. 23, 1815.

In State *vs.* Pike, 15 N. H., 83, the defendant was charged with perjury, alleged to have been committed in bankruptcy proceedings under the U. S. Bankrupt Act, which provided that the bankrupt should at all times be subject to examination orally or upon written interrogatories before the District Court, or any commission appointed by the court therefor, on oath, etc.; "and if, in any such examination, he shall willfully and corruptly answer, or swear, or affirm falsely, he shall

be deemed guilty of perjury, and shall be punishable therefor *in like manner as the crime of perjury is now punishable by the laws of the United States.*"

Ch. J. Parker, in the course of his opinion, said (p. 90):

"Undoubtedly a strong legal argument might be presented in favor of the exclusive right of the United States to punish the offense of counterfeiting, or at least to uphold the exclusive character of the laws of Congress upon that subject when they exist. It may well be doubted whether the power to coin would not be exclusive in the United States, if there were no prohibition upon the states in the Constitution. The states could not furnish a uniform currency. When the principal power is exclusive, it may well deserve question whether the auxiliary, or incidental, when exerted, is not also. There is great convenience, however, in admitting that the states have the right to punish such offenses, and the weight of authority seems to be upon that side. Happily for us, however, we are of opinion that the classes of crime we have thus referred to, although there is some analogy between them and the case before us, do not necessarily govern this case. There is a distinction which we think is conclusive, whatever may be the true principle applicable to them. In those cases the acts done and charged as violations of the laws of both governments are not done in the course of the administration of the laws of either government. But the matters from which the charge now before us arises are alleged to have occurred under, and in the course of, the execution of the laws of the United States. Those laws require certain things to be done. Congress had the right to prescribe how they should be done, to regulate the duties of all persons who acted under the law, and to prescribe penalties for the violation of such duties. In such case, if acts are done which, if transacted under the laws of the state would have constituted offenses within the provisions of our criminal code, yet being done in pursuance of the laws of another government (having the sole power to regulate the whole proceeding) authorizing the act to be done, prescribing the mode, imposing the duty, and affixing the penalty for the violation of it, the acts cannot be regarded as having been done under the sanction of the laws of this State so as to subject the parties to punishment under those laws."

In People *vs.* Kelly, 38 Cal., 145, Sawyer, *C. J.*, says, p. 150:

"The state tribunals have no power to punish crimes against the laws of the United States, *as such*. The same act may, in some instances, be an offense against the laws of both, and it is only as an offense against the state laws that it can be punished by the state, in any event. That the offense is not cognizable in the state courts, the case of State *vs.* Adams (4 Blackf., 147), and State *vs.* Pike (15 N. H., 83) are authorities directly in point. The first is entirely similar to the present case, the affidavit constituting the offense being with reference to the settlement of the defendant on the public lands. In the second the perjury was committed in a proceeding under the national act. The court distinguishes it from the class of cases like Fox *vs.* The State of Ohio (5 How., 410); Moore *vs.* Illinois (14 How., 14), and People *vs.* White (34 Cal., 183)."

So also in *Ex parte* Dock Bridges, 2 Woods (U. S. C. C.), 428, it was held that perjury, committed in the course of a judicial investigation, before a United States Commissioner under the Enforcement act, is an offense against the public justice of the United States, exclusively cognizable in the courts of the United States.

Bradley, Circuit Judge, in the course of his opinion says, p. 429:

"The offense, though set out according to its circumstances, was charged to have been committed against the laws of Georgia; but it was obvious that it was a crime against the laws of the United States only. It was perjury committed in the course of judicial investigation under the acts of Congress, and was an offense against the public justice of the United States."

And, again, at p. 430:

"It would be a manifest incongruity for one sovereignty to punish a person for an offense committed against the laws of another sovereignty. And whilst certain offenses, involving breaches of the peace, counterfeiting the public money, etc., may be violations of both federal and state laws, and punishable under both, perjury in a judicial proceeding is peculiarly an

offense against the system of laws under which the court is organized and proceeding."

In Commonwealth, ex rel. Torrey *vs.* Ketner, 92 Penn. St., 372, the relator was the cashier of the First National Bank of Ashland, Pa., and was indicted for embezzling the funds of the bank. There it was held that embezzlement by a cashier of a national bank was punishable solely under section 5209, Revised Statutes of the United States, because the Pennsylvania statutes were not intended to provide a punishment for such officers, and the penalties of said acts could not, therefore, be imposed upon them. The state acts related to crimes by officers of banks, and were held to apply only to officers of banks created by state authority. Therefore, no prosecution could be maintained because there was no state law applicable, and the federal statute could not be used as the basis of a proceeding in the state court.

In State *vs.* Adams, 4 Blackf., 146, it was held that false swearing in an affidavit under an Act of Congress, in relation to the entry of public lands, was punishable under the Act of Congress, and that, therefore, it could not be punished in the state courts, although the general language of the Indiana statute was broad enough to cover the case.

In Com. *vs.* Felton, 101 Mass., 204, 206–7, *upon the concession of the prosecution that the offense of embezzling funds of National banks was exclusively cognizable in the Federal Courts*, it was held that the offense of being accessory thereto could not be punished in the state courts, because the state could not enforce a federal statute.

The case of People *vs.* Sweetman, 3 Park., 358, was another case of perjury, in false swearing under the naturalization laws, in a state court. It was plain, as

here, that the general terms of the statute covered the case; but the conviction was reversed, on the ground that, being a crime against the United States, the state law could not be invoked to prosecute it.

The exception contained in the Act of 1789, and re-enacted in section 629, if it was intended for the purpose suggested was therefore useless, for no provision of federal legislation could invest the state courts with jurisdiction over acts within the penal cognizance of the federal courts; the laws of the United States could not, as we have seen, impose any duty or power on the state courts to enforce federal penal statutes, and the exception in the judiciary act if interpreted as intending to impose any such power or duty was therefore inoperative.

Tenth.

The 10th article of the amendments declares, that the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the States repectively, or to the people.

Martin *vs.* Hunter's Lessee, 1 Wheat., 325.
M'Culloch *vs.* Mayland, 4 Wheat., 404.

The basis of the government is, that the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness. These principles are fundamental, and designed to be permanent.

Marbury *vs.* Madison, 1 Cranch., 176; 5 Wheat., 48.

The constitution containing a grant of powers in many instances similar to those already existing in the

state governments, and some of these being of vital importance also to state authority and state legislation, a mere grant of such powers in affirmative terms to Congress does not, *per se*, transfer an exclusive sovereignty on such subjects to the latter. On the contrary, the powers so granted are never exclusive of similar powers existing in the states, unless where the constitution has expressly, in terms, given an exclusive power to Congress, or the exercise of a like power is prohibited to the states, or there is a direct repugnancy or incompatibility in the exercise of it by the states. The example of the first class is to be found in the exclusive legislation delegated to Congress over places purchased by the consent of the legislature of the state in which the same shall be, for forts, arsenals, dock-yards, etc.; of the second class, the prohibition of a state to coin money, or emit bills of credit; of the third class, the power to establish a uniform rule of naturalization, and the delegation of admiralty and maritime jurisdiction. In all other cases not falling within the classes already mentioned the states retain concurrent authority with Congress, not only upon the letter and spirit of the 10th Article of the Amendments of the Constitution, but upon the soundest principles of general reasoning.

Houston *vs.* Moore, 5 Wheat., 48, per Story, *J.*

There is this reserve, however, that in cases of concurrent authority, where the laws of the states are in direct and manifest collision *over the whole of the same subject*, those of the United States, being the supreme law of the land, are of paramount authority, and the state laws so far, and so far only, as such incompatibility exists must necessarily yield.

Ib.

So it has been generally held that the state courts have concurrent jurisdiction within the courts of

the United States in cases to which the judicial power is extended, unless the jurisdiction of the courts of the United States be rendered exclusive by the words of the third article of the constitution.

Cohens *vs.* Virginia, 6 Wheat., 396, per Marshall, *C. J.*

How far the jurisdiction of the federal courts is rendered exclusive by the words of the third article of the constitution is not specifically stated, except, as we have seen, that it is exclusive as to all cases of admiralty and maritime jurisdiction.

Martin *vs.* Hunter's Lessee, 1 Wheat., 337.
See Houston *vs.* Moore, 5 Wheat., 1.

But it is said that Congress has power to make the jurisdiction of the courts of the United States exclusive in all cases *to which the judicial power of the United States is extended by the Constitution*, and through the Act of September 24, 1789, have legislated on that supposition.

Martin *vs.* Hunter's Lessee (*supra*).
See Houston *vs.* Moore (*supra*).
Cohens *vs.* Virginia (*supra*).

By the eleventh section of the act establishing Circuit Courts, passed the 13th of February, 1801, now repealed, the cognizance of all penalties and forfeitures accruing under the laws of the United States was vested in the Circuit Courts where the offense was committed within fifty miles of the place of holding the Circuit Courts.

By various acts of Congress, duties have been imposed on state magistrates and courts, and they have been vested with jurisdiction in civil suits, and in complaints and prosecutions for fines, penalties and forfeitures, arising under laws of the United States. But, in penal and criminal cases, as we have seen, the

state courts have consistently declined to exercise such jurisdiction, though expressly vested in them by act of Congress.

The judicial power of the General Government conveyed by the states is confined to civil controversies and there is no grant, express or implied, of judicial power to the federal government in respect to criminal prosecutions for violations of state laws.

Eleventh.

The authorities upon which the appellee relies fail to recognize the distinction between wrongs against the United States and wrongs against a state, and that the exclusive jurisdiction of the United States courts amounts simply to a prohibition against the state courts indicting or punishing offenses which are made criminal offenses against the federal government by the statutes of the United States.

This distinction appears to have been overlooked by Judge Wheeler, in the case of Houghton (8 Fed. Rep., 897). He says:

"National Banks are organized under the laws of the United States; their bills are issued to them by the Treasury Department of the United States, secured by bonds of the United States on deposit there, which fact is to be expressed on their face by the signatures of the Treasurer and Register, and the seal of the Treasury of the United States (Rev. St., sec. 5172). They are securities of the United States which Congress has power to protect by punishing counterfeiting them, and the passing of counterfeits of them, and are so declared to be in the law of the United States (Rev. St., 5413).

Again he says (p. 900):

"There are many offenses made punishable by that title (the title on Crimes, U. S. R. S.), some of them such as could never

be offenses against the laws of any of the States; some, such as the obstructing the executive officers in the performance of their duties, and the service of the processes of the Courts of the United States, where the same act might constitute one offense against the laws of the United States and another different offense against the laws of the State. This section of the title is general, and might be applicable to all these if taken in its broadest sense. It might be, or be claimed to be, that making any act punishable under the laws of Congress would prevent the States from punishing a different offense involved in the same act. The assault upon a marshal, to obstruct his service of process, would be punishable under this title for the obstruction, but not assault. The assault might be punishable under the State laws, but not the obstruction. The title makes certain offenses against the laws of the United States punishable. This section seems to mean that making them so punishable shall not prevent the States from taking hold of any offenses which may be involved that are contrary to the State laws and not cognizable under the United States laws and punishing them. * * *

The act of passing counterfeited bills, made punishable under the statute of the State under which the relator was indicted, might and often would, concur with others to constitute a cheat which would be punishable by the laws of the State of long standing against obtaining money or goods by privy or false token. * * *

It was upon this ground that the passing the counterfeited National Bank bill was a mere private cheat under the laws of Virginia, that the conviction was upheld by the majority of the Court in Jett *vs.* Virginia, 18 Gratt., 933."

The learned Judge states, *inter alia*, that the offense for which the relator was indicted was precisely the same offense made punishable by the laws of the United States, and that the state statute was passed subsequent to that of the United States. Manifestly, upon this view, in that case, it was attempted by the State authorities to punish the relator for a violation of a crime created by Congress, and, in such case, there can be no doubt that the jurisdiction of the United States courts is exclusive; but such was not the case. The state was simply attempting to enforce its own laws.

That the rule in *Ex parte* Houghton is erroneous is conclusively shown by the language of Mr. Justice Gray, *in re* Loney, 134 U. S., 375, where he says:

"There are cases (the most familiar of which are those of making and uttering counterfeit money) in which the same act may be a violation of the laws of the state as well as of the laws of the United States, and be punishable by the judiciary of either."

Citing, Fox *vs.* Ohio, 5 How., 410.
United States *vs.* Marigold, 9 How., 560.
Moore *vs.* Illinois, 14 How., 13.
Ex parte Siebold, 100 U. S., 371, 390.
Cross *vs.* North Carolina, 132 U. S., 131.

And in Dashing *vs.* State, 78 Indiana, 35, it is held that section 711 of the Revised Statutes of the United States, construed with section 5328, does not divest the state of the right and jurisdiction to enact and enforce their own criminal laws, though the acts made criminal thereby might also be made criminal by the laws of the United States.

Dashing *vs.* The State, 78 Ind., 357.

It is further to be observed that the concession made by Mr. Justice Bradley, in *Ex parte* Bridges, 2 Woods, 428, controverts the position taken by Judge Wheeler in *Ex parte* Houghton (*supra*), a counterfeiting money case, which is specially mentioned by Judge Bradley as falling within the concurrent jurisdiction of the State. So that the conclusion arrived at by the Court in *Ex parte* Houghton as to the scope of 711 is not to be accepted *even in a counterfeiting case*, which is a direct offense against the United States, much less is it to be accepted in a case, as in the one at bar, where the offense is primarily against the state.

In *Ex parte* Geisler, 4 Woods, 381, the rule is laid down directly contrary to that in *ex parte* Houghton,

and the state courts are held to have jurisdiction by virtue of section 5328 even of counterfeiting cases.

Ex parte Geisler, 4 Woods, 381.

None of the cases which are understood to be relied on by the counsel for the appellee are cases primarily of an offense against the states, but in each and every case the offense is one primarily against the United States, so that, in view of the established doctrines as to concurrent jurisdiction of offenses against the laws of the United States and the states, the effect of section 711 must be limited, under the most liberal construction, to offenses peculiarly and primarily against the United States.

In U. S. *vs.* Busky, 38 Fed. Rep., 99, Judge Hughes, in order to sustain his conclusion, directly overruled the decisions of the Supreme Court herein cited.

Twelfth.

In view of the fact that it has been the settled policy of the federal legislature and the federal courts, since 1795, to reserve to the state courts their full measure of jurisdiction over state offenses, it is submitted that the provisions of section 711 should be most strictly construed. If broadly construed, it wholly ousts the state courts of jurisdiction over all federal crimes except those enumerated in the title "Crimes," a result which would overturn the settled policy of the United States since 1795. This cannot have been the intention of the Congress. The "crimes and offenses cognizable under the authority of the United States," to which section 711 refers, must have included only those acts which are offenses (1) of a character which

brings them within the exclusive jurisdiction of the federal courts, and which Congress has, under the constitution, express power to punish, such as piracies and felonies on the high seas and offenses against the law of nations, and (2) acts which though, in another aspect, the proper subject of state cognizance, nevertheless violate federal laws; in which cases the statute is only intended to apply to the federal aspect of the act, leaving the state free to deal with the wrong justiciable in its courts.

It could not have been the intention of Congress to include among those crimes acts which are equally offenses against the state and the United States; acts which it is equally the interest, right and duty both of the state and the United States to punish. Any other construction would paralyze the power of the state to punish a large class of crimes which are peculiarly dangerous to the people of that state.

It must be conceded that the state courts would, in the absence of section 711 of the Revised Statutes, have urisdiction to punish the acts of the appellee.

Section 711 is in derogation of the common law power of the state courts, and must, of course, under elementary principles of statuatory construction, be strictly construed.

In addition, it must be considered that, if liberally construed, it subverts a policy which has been enforced by Congress from 1795.

In those cases in which the criminal jurisdiction of the federal courts has been extended beyond the safe limits indicated by the early writers and cases, there has been, almost invariably, dissent and division in the Supreme Court, as in Tennessee *vs.* Davis, 100 U. S., 257, and *In re* Neagle, 135 U. S., 1, wherein the dissenting judges delivered opinions remonstrating with great

ability and energy against the unwarranted extension of the criminal jurisdiction of the Federal Courts.

The extended construction sought to be given in this case to section 711 of the United States Revised Statutes is a direct attack upon the rights of sovereignty reserved to the State of New York upon the adoption of the constitution. Jurisdiction of crimes committed within her territory, and in violation of her law, was not then surrendered by her, and cannot be held to have been so surrendered without depriving her of an essential element of that sovereignty the preservation of which, in its integrity, is necessary to her "peace and dignity," as one of the free and independent states of the United States under the Constitution.

The appellee herein is charged by indictments presented by a court of competent jurisdiction with the commission of acts each of which constitutes two crimes: one a crime against the state, the other a crime against the United States. The state seeks to prosecute him for the crime against the state. The federal government has yet to deal with him.

Upon this aspect of the case, section 711 in its application here presents no difficulty. The state proposes to exercise *its* jurisdiction by trying the offender for the offense against *it*, but the "crime and offense cognizable under the authority of the United States," of which jurisdiction is "vested in the courts of the United States," and which section 711 provides "shall be exclusive of the courts of the several states," namely, the wrong against the federal government committed by the same act, still remains unprosecuted. The state could not and has not assumed jurisdiction over it. It is cognizable under the authority of the United States, and its courts may yet exercise the jurisdiction with which they are vested, and which the

statute declares is exclusive of the courts of the state of New York.

Thirteenth.

In People *vs.* Welch, 141 N. Y., 266 (decided by the New York Court of Appeals, Feb. 27, 1894), the defendant was convicted in a state court of the crime of manslaughter, in having by culpable negligence in the management of a tug-boat navigating the waters of the Hudson River, of which he was the pilot, caused his vessel to collide with a yacht, resulting in the sinking the yacht and the drowning of a human being who was on board of it at the time.

The facts brought the case clearly within the provisions of section 5344 (title 70, "Crimes") of the United States Revised Statutes under which every pilot, etc., by whose misconduct, negligence or inattention to duty, etc., the life of any person shall be destroyed shall be deemed guilty of manslaughter, etc.

The Court of Appeals held that inasmuch as section 5328, which is one of the general provisions of the same title, declares that nothing therein "shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof," section 711 was to be construed in connection with this provision and also with section 629, and so construed, the jurisdiction of the state remained unimpaired.

The opinion of the court, however, seems to regard the principle hereinbefore referred to that where powers conferred upon Congress by the constitution are not in terms or in their nature exclusive of the power of the states, they may be made so by national legis-

lation excluding the jurisdiction of states in the particular matter, although within their original and antecedent authority—as applicable to the subject.

Chief Justice Andrews, delivering the opinion of the Court, says:

"The courts of this state on the adoption of the state constitution of 1777, became vested with the jurisdiction over offenses cognizable at common law, and this jurisdiction is unimpaired and in full force except in so far as it has been modified by state legislation, or was surrendered to the United States by the federal constitution, or has been taken away by act of Congress lawfully enacted in execution of the powers conferred by that instrument. It is an accepted canon in the construction of powers granted to the General Government by the federal constitution that state authority existing when the constitution was adopted is not excluded by the mere grant of similar powers to Congress. The powers granted by the federal constitution are not exclusive, unless made so in terms, or prohibited to the states, or are incompatible with the exercise of a concurrent jurisdiction. But the principle has been grafted upon the subject that although powers conferred by the constitution upon Congress are not in terms or in their nature exclusive of the power of the states, they may be made so by national legislation excluding the jurisdiction of the states in the particular matter, although within their original and antecedent authority. In Martin *vs.* Hunter (1 Wheat., 304) Judge Story, referring to the judicial power of the United States, said: 'It is manifest that the judicial power of the United States is unavoidably in some cases exclusive of all state authority, and in all others may be made so at the election of Congress.' The Judiciary Act of 1789 (U. S. Sts. at Large, vol. I., ch. 20) was framed upon this construction of the power of Congress, and the jurisdiction of the courts of the United States was in some cases made exclusive, and in others the jurisdiction of the state courts, not being in terms excluded, was left unaffected and was concurrent with the courts of the union as to matters over which the state courts could, by their own powers and constitution, exercise jurisdiction. A distinction has been suggested as to the power of Congress to make the jurisdiction of the United States courts exclusive, between cases in which the state courts had jurisdiction antecedent to the adoption of the constitution, and there where the right involved or the liability incurred arises exclusively

under a law of Congress, and without which it would have had no existence. (See Curtis on Const. § 141.) But the recent cases of 'The Moses Taylor' (4 Wend. 441), and Claflin *vs.* Houseman (93 U. S., 130) seem to be adverse to the distinction suggested and to hold that it is competent for Congress to exclude the jurisdiction of the state court in respect of all subjects upon which Congress may legislate. In 'The Moses Taylor' it seemed to be conceded that the proceeding there under review was a matter as to which the original states through their courts could have exercised jurisdiction antecedent to the adoption of the federal constitution, and the decision was placed on the ground that the jurisdiction was excluded by force of the ninth section of the Judiciary Act of 1789, and vested exclusively in the District Courts of the United States. (See 1 Kent Com. 400.) But it is obvious that to exclude the jurisdiction of the state courts over matters within their ordinary jurisdiction, the intention of Congress to exercise this power should be distinctly manifested and that the legislation relied upon to deprive the state courts of jurisdiction should be clear and unambiguous. There can be no presumption that state authority is excluded from the mere fact that Congress has legislated. There must be express words of exclusion, or a manifest repugnancy in the exercise of state authority over the subject. (See Curtis on Const., § 121.)

We submit the learned court failed to recognize the precise nature of the subjects in respect to which power was granted to the general government by the constitution, and that no right of legislation, or judicial power, as to the prosecution of wrongs against the states or matters within their proper police regulations, was ever so conferred.

The right to pass laws for the prosecution of acts constituting violations of constitutional federal laws, the commission of which would also constitute violations of state laws and the exclusive right to prosecute the perpetrators of those acts for the violation of the federal laws as enacted, in the federal courts, has been, we concede, granted to the general government.

But the state's grant of power has gone no further than this, and its concession within the limits so stated in no manner affects its rights and privileges, and its own judicial power over the same acts in the aspect in which they are also proper subjects of state cognizance. The fact that the state has authorized Congress to punish the same acts does not undo the wrong those acts have occasioned the state, or make them less subject for state discipline. If it were to be argued that their punishment in the federal courts would vindicate the state's dignity, and administer the disciplinary vengeance which the state had a right to exact from the offenders, this would result in the situation of the federal courts enforcing the laws of the state, which, as we have before seen, is not within the power of the general government.

If, in a case where the same act actually violates express provisions of state and federal laws, exclusive cognizance of the act is to be vested in the judicial power of one jurisdiction, it follows that the other jurisdiction is deprived of all means of exacting penal reparation for the wrong, and one crime so committed, because another crime arising out of the same act was cognizable in another jurisdiction, would not be punishable at all.

We think the question admits of a view harmonizing the authorities and removing all seeming conflict between the state and the federal courts as to penal legislation over acts cognizable in both jurisdictions, namely: that both can prosecute and punish the act for the wrong the act constitutes against its laws.

On this view, the principle referred to in People *vs.* Welsh, while correct when properly applied, has no application to that case nor to the case at bar. The powers vested in Congress can, unquestionably, be made exclusive when proper subjects of federal cogni-

zance, but Congress has no power in respect to violations of state laws.

The cases cited in the opinion of the Court of Appeals are not adverse to our contention. None of the authorities, we submit, goes further than to hold that upon subjects wholly within the federal judicial power, the jurisdiction of the states may be excluded. But where the state has jurisdiction over a part of the subject, and that part is one exclusively of state concern, and a thing in which the federal government has no interest whatever, it seems clear that the right to take exclusive cognizance over another part of the subject which is of federal concern can create no possible conflict. Either the state or federal government, is then at liberty to assert its jurisdiction; and the principle referred to in the Welsh case is not brought into operation.

Conclusion.

The order of the Circuit Court discharging the appellee should be reversed, and the Circuit Court directed to enter an order dismissing the writ of *habeas corpus*, and remanding the appellee to the custody of the warden of the City Prison of the City of New York.

Respectfully submitted,

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155-89

Supreme Court of the United States.

PEOPLE OF STATE OF NEW YORK,
Appellants,

v.

JOHN C. ENO.

602

WRIT OF ERROR BY THE PEOPLE OF THE STATE OF NEW YORK TO REVIEW THE ORDER OF THE CIRCUIT COURT IN THE SECOND CIRCUIT, DISCHARGING ENO FROM IMPRISONMENT.

Brief on Behalf of Petitioner.

This was a *habeas corpus* to procure the discharge of John C. Eno, who was held by the State authorities under bench warrants issued upon indictments obtained in the Court of General Sessions for the City of New York. The indictments are five in number (fols. 3 to 24), and, so far as this application is concerned, are substantially alike in form. They were found, apparently, under Sections 511 and 515 of the Penal Code of the State of New York, which are as follows:

"SECTION 511. A person is guilty of forgery in the second degree who, with intent to defraud, forges * * * an entry made in any book of records or accounts kept by a corporation doing business within the State, or in any account kept by such a corporation,

whereby any pecuniary obligation, claim or credit is or purports to be created, increased, diminished, discharged, or in any manner affected.

" SECTION 515. A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property, either,

" 1. Alters, erases, obliterates or destroys an account, book of accounts, record or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership or individual; or,

" 2. *Makes a false entry in any such account or book of accounts;* or,

" 3. Willfully omits to make true entry of any material particular in any such account or book of accounts, made, written or kept by him or under his direction, is guilty of forgery in the third degree."

The indictments charge that John C. Eno, being an officer of a National Bank, made a certain false entries in the books of that Bank with intent to deceive.

We contend that the State courts have no jurisdiction over this offense, as it is carefully provided for by the United States Statutes.

Section 5209, of the United States Revised Statutes, which is a re-enactment of the original Act of 1861, creating the national banking system, covers the precise offenses charged in these indictments. That section is as follows:

" Every president, director, cashier, teller, clerk or agent of any association * * * who makes any false entry in any book, report or statement of the association, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association, and every person who with like intent aids or abets any officer, clerk or agent in any violation of this section,

shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years, nor more than ten."

I.

Prima facie, it would seem it ought to be certain that where Congress creates an entity, a body corporate, and provides that for certain acts its officers shall be punishable to a certain extent, a State court cannot, by an act (passed after the Law of Congress) constitutionally provide for the punishment in the State courts of the precise offense covered by the Act of Congress and affix a punishment thereto different from that which Congress has affixed. The Revised Statutes, including the Banking Act, were passed in 1874. The Penal Code of New York was passed in 1881. The Revised Statutes (Section 5209) affix for false entries an imprisonment of not less than five, nor more than ten years.

The Penal Code of New York makes a false entry in the books of a corporation a forgery in the third degree, and makes the punishment not more than five years (Section 512).

II.

Where the United States Statutes provide for the punishment of a particular crime arising under the laws of Congress, the State Courts have no jurisdiction to punish for the offense, though it is covered by the general language of a Statute of the State.

It has always been held that it is within the constitutional power of Congress to confine to the Courts of the United States jurisdiction of crimes arising under the laws of the United States.

See Claflin vs. Houseman, 93 U. S., 130, 137.
The Moses Taylor, 4 Wall., 411, 428.

Prior to the Revised Statutes of 1874, Congress, however, had, in various statutes, recognized a concurrent jurisdiction in the State Courts over the crimes referred to in them.

In this condition of things, the question from time to time arose whether the mere fact that Congress had provided by statute for punishment for an offense of itself without further prevented the State Courts from taking jurisdiction of what was substantially the same statutory offense.

As stated by Kent, 1 Comm., 12th Ed., 389 :

" The Judiciary Act " (1789) " grants exclusive jurisdiction to the Circuit Courts of all crimes and offenses cognizable under the authority of the United States, except where the laws of the United States should otherwise provide ; and this accounts for the proviso in the Act of 24th of February, 1807, C. 75, and in the Act of 10th of April, 1816, C. 44, concerning the forgery of the notes of the Bank of the United States, declaring that nothing in that act contained should be construed to deprive the Courts of the individual States of jurisdiction under the laws of the several States over offenses made punishable by that act. There is a similar proviso in the Act of 21st of April, 1806, C. 49, concerning the counterfeiters of the current coin of the United States. Without these provisions, the State Courts could not have exercised concurrent jurisdiction over those offenses consistently with the Judiciary Act of 1789. But these saving clauses restored the concurrent jurisdiction of the State Courts, so far as under the State's authority

it could be exercised by them. There are many other acts of Congress which permit jurisdiction over the offenses therein described, to be exercised by State magistrates and courts. This was necessary, because the concurrent jurisdiction of the State Courts over all offenses was taken away, and that jurisdiction was vested exclusively in the national courts by the Judiciary Act, and it required another act to restore it. The State courts could exercise no jurisdiction whatever over crimes and offenses against the United States, unless where, in particular cases, the laws had otherwise provided, and whenever such provision was made the claim of exclusive jurisdiction in the particular cases was withdrawn and the concurrent jurisdiction of the State courts, *eo instanti*, restored, not by way of grant from the national government, but by the removal of a disability before imposed upon the State tribunals."

If we look at the decisions, the result has been, as stated by this Court in Claflin vs. Houseman, *supra :*

" The general principle being that where jurisdiction may be confined in the United States Courts, it may be made exclusive where not so by the Constitution itself, but if exclusive jurisdiction be neither expressed nor implied, the State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it." * * *

"The general question whether State courts can exercise concurrent jurisdiction with the federal courts in cases arising under the Constitution, laws and treaties of the United States has been elaborately discussed, both on the Bench and in published treatises—sometimes with a leaning in one direction and sometimes in the other—but the result of these discussions has, in our judgment, been to affirm the jurisdiction where it is not excluded by express provision or by incompatibility in its exercise, arising from the nature of the particular case."

In this condition of matters Section 711 of the Revised Statutes of 1874 was passed, which introduced into the Statutes of the United States the following language:

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereafter mentioned shall be exclusive of the courts of the several States;" and then follows an enumeration of seven classes, the first one being: "Of all crimes and offenses cognizable under the laws of the United States." The other classes are admiralty cases, bankruptcy, patents, copyrights and suits between citizens and States.

III.

The only question so far as this section is concerned is whether a particular crime is "cognizable" under the laws of the United States. This word "cognizable" is defined in the Century Dictionary as "capable of being subjected to judicial examination in a court; within the scope of the jurisdiction, capable of being or liable to be heard, tried and determined."

There is, of course, no doubt that the offense of false entry in the books of a national bank is "cognizable" in the courts of the United States. How, then, can it be pretended that the State courts can since the Revised Statutes were passed have jurisdiction of the same offense, and that, too, under a general statute which is left full scope for its application with reference to the books of other corporations?

It should be noted here that the effect of this provision in the Revised Statutes is not so far-reaching as might at first sight appear.

Section 5328 provides: "Nothing *in this title* shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof."

The title referred to is Title LXX., which embraces Sections 5323 to 5550 of the Revised Statutes, and covers most of the statutory provisions as to crimes. But the provision for the punishment of the offense of making a false entry in a book of a national bank is not contained in that Title, but is in Section 5209, which is in Title LXII., being the Title devoted to the National Banks, which, as I have said, expressly takes away the jurisdiction of the State courts.

The confining the effect of Section 5328 to crimes specified in that title is on the familiar principles significant.

IV.

On principle, then, there would seem to be no escape from the conclusion that the State courts have no jurisdiction over the offense alleged to have been committed by the petitioner. There is as little doubt under the decisions of the courts.

Prior to decision in the present case the case of *Ex parte* Houghton, 7 Federal Reporter, 657; 8 Federal Reporter, 897, in the District Court of Vermont, had come before Judge WHEELER. It was a case of *habeas corpus* for the discharge of a prisoner held by the State courts for counterfeiting moneys of the United States. Judge WHEELER considers the question in the light of the new provision in Section 711 of the Revised Statutes, which I have quoted, and holds that by reason of that section the State courts have now no jurisdiction of the offense of counterfeiting moneys of the United States.

As the punishment for counterfeiting under the Revised Statutes is prescribed by a section which is contained in the title which embraces Section 5238, Judge WHEELER was compelled to give a construction to the latter section, and holds that, in spite of that, Section 711 takes away jurisdiction from the State courts of the offense of counterfeiting. For the reasons already pointed out, we are not concerned with the question whether Judge WHEELER'S construction of Section 5238 is correct or not.

In People vs. Fonda, 62 Mich., 401, it was expressly held that the State courts have no jurisdiction of the crime of embezzlement or larceny by the clerk of a national bank, for the reason that that crime is made punishable by Section 5209 of the Revised Statutes, and that therefore jurisdiction of the offense is taken away by Section 711.

The statute under which the conviction was had in the Michigan Court read as follows:

"If any officer, agent, clerk or servant of any incorporated company, or of any city, township, incorporated town or village, school district, or other public or municipal corporation, or of any clerk, agent or servant of any private persons, or of a copartnership, except apprentices, and other persons under the age of sixteen years, shall embezzle, or fraudulently dispose of, or convert to his own use, or shall take or secrete, with intent to embezzle and convert to his own use, without consent of his employer or master, any money or other property of another, which shall have come to his possession, or shall be under his charge, by virtue of such office or employment, he shall be deemed by so doing to have committed the crime of larceny."

This statute was passed by the Legislature prior to the National Banking System.

At the time the alleged act of embezzlement was committed the respondent was in the bank, and in its service as clerk.

The Court say:

"The question raised in this case is: The Federal Government having declared the act charged against this respondent a criminal offense, and provided for the apprehension, trial and conviction of the offender under its laws, had the State Court any jurisdiction, concurrent or otherwise, to deal with the respondent under the State statute making the same act criminal and providing for its punishment? The learned counsel for the respondent claim that the jurisdiction of the Federal Court in the case is complete and exclusive; that the offense charged in the information is for the violation of a Federal law, and that the punishment therefor has become fixed and established and the whole subject has been covered by the legislation of Congress."

After quoting Section 5209 of the United States Revised Statutes, the Court continues:

"An examination of this statute, I think, must convince any one that the offense described in this information is clearly defined therein, and falls within the scope of the act and within the jurisdiction of the Federal Court; and, if that jurisdiction is exclusive in the case, but little remains to be said—if it is, the conviction cannot be maintained.

"Is the jurisdiction concurrent with that of the State," is the only remaining question.

"Section 711 of Chapter 12 of the Revised Statutes of the United States provides that:

"'The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the Courts of the Several States. First, of all crimes and offenses cognizable under the authority of the United States.'

"Congress, by law, created the national banking system and provided for its internal workings, and prescribed a punishment for the offense charged against the respondent (Rev. Stat. U. S., Title 62). It seems to me clearly the case is one falling within the paragraph of Section 711 above quoted, and that by the

Federal law itself the jurisdiction of the State is expressly excluded. * * *

"Commonwealth vs. Felton, 101 Mass., 204, states the conclusion of the matter in that case in language quite applicable to the present. The respondent was charged in that case with being an accessory to an embezzlement by an officer of a national bank. In delivering the opinion of the Court Mr. Justice AMES said: "'The difficulty in the way of holding the defendant upon the present indictment is that the Act of Congress has taken the crime of the principal out of our jurisdiction, and our Courts cannot deal with him upon that charge.'

"As the case comes to us upon this record, I do not think the judgment should be allowed to stand. The Circuit Court was without jurisdiction."

In Darling vs. State, 78 Indiana, 357, it was held that the State Courts still had jurisdiction of the crime of counterfeiting, but only because Section 5238 applied to that crime and preserved the jusisdiction.

Ex parte Giesler, 4 Woods, U. S., 381, is to the same effect.

In Commonwealth vs. Felton, 101 Mass., 204, already referred to in the opinion of the Pennsylvania Court, it was held that there was no jurisdiction in the State Courts to punish one who was accessory to embezzlement by an officer of a national bank because there was no jurisdiction in the State Court to punish the principal. And this was held to be so, though the United States Statutes might not extend to the punishment of an accessory.

In *Ex parte* Dock Bridges, 2 Woods, U. S., 428, it was held that the State Courts had no power to punish perjury committed in an investigation held under an Act of Congress, because, that crime being punishable by Section 5392 of the Revised Statutes, jurisdiction over it was taken away from the State Courts.

This case is more fully reported in Brown vs. United States, 14 American Law Register, 566, where the

opinion of District Judge ERSKINE is given, and the affirmance thereof on appeal by Justice BRADLEY of this Court.

There was a similar decision before the Revised Statutes as to perjury under the Bankrupt Law of 1841, in State vs. Pike, 15 N. H., 83, and as to perjury under the Land Law in People vs. Kelly, 38 Cal., 145.

The case of Commonwealth vs. Tenney, 97 Mass., 50, is to be noted. The Supreme Court of Massachusetts there held that embezzlement by an officer of a national bank of private property deposited in it was cognizable in the State Courts only because the United States had not legislated with reference thereto.

Since the Revised Statutes were passed there is absolutely no decided case in the United States or State Courts which differs from these.

V.

There are cases in the highest court which recognize the fact that the same act may constitute a crime punishable both in the United States and State courts. But they all arose before the Revised Statutes of 1874 were passed, and when either the jurisdiction of the State courts had been expressly reserved or where the offences were not identical. Even before that statute, though there is some broad language used, in no reported case does the decision turn upon that question.

Such cases are, stating them chronologically :

Fox vs. State of Ohio, 5 How., 434,
counterfeiting held to be also a common law fraud, explained in

U. S. Marigold, 9 How., 560,
Also counterfeiting.
Moore vs. People of Illinois, 14 How., 13,

Fugitive Slave law.
U. S. vs. Cruikshank, 92 U. S., 542,
Enforcement Act.
Ex parte Seibold, 100 U. S., 371,
Election law.
Cross vs. North Carolina, 132 U. S., 131,
Forging of note for discount by national bank.
In re Loney, 134 U. S., 372,
Perjury in contested election.

VI.

The counsel for the State of New York, in his argument before the Circuit Judge, did not venture to deny that the offense charged in the indictment was the same as that denounced by the United States statute; and that the Courts of the United States could be given exclusive jurisdiction of crimes against the United States. But he said:

"It will be observed that this implied power extends only to crimes against the United States. In the exercise of this power Congress has provided for the punishment of certain officers and agents of national banks for certain enumerated offenses against the national banks of which they are the officers and agents. Now, in so far as the acts enumerated in Section 5209 are offenses against the national banks, they are offenses against the United States, as the national banks are the creatures of Federal legislation, which has been held constitutional. But, in so far as those acts may also be offenses against the State in which they are committed, there is no power in Congress, under the Constitution, to oust the State Courts of jurisdiction of such acts. The same act may well be, as will be more particularly shown hereafter, a violation of the laws of the State

and of the United States, and punishable by the judiciary of either. The crime charged against the relator is one of those crimes which have a two-fold aspect, being from one point of view a crime against the national bank and so against the National Government; and on the other a crime against the people of the State of New York. Since, therefore, the Constitution confers upon Congress, even by the broadest implication, only the power to punish crimes against the United States, and since certain crimes and offenses both against the State and the United States are equally punishable by the laws of both, it necessarily follows that as to such crimes the Constitution has conferred upon Congress no power to oust the State Courts of their jurisdiction over such crimes, considered as offenses against the State."

And later he said: "Granting for purposes of argument that the acts charged in the State indictments were cognizable under Section 5209 of the United States Revised Statutes, it is still respectfully submitted that each of those acts constituted a twofold crime, one of which was exclusively cognizable under the laws of the United States, and the other exclusively cognizable under the laws of the State of New York. The act of the relator in making a false and fraudulent entry on the books of the Second National Bank had a double effect. In the first place it was a crime against a national bank, and a violation of the fiduciary relation existing between the relator and the bank. As such it was a crime against the United States. In the second place it was an act of forgery under the statutes of New York and as such a crime against the people of the State of New York. The great volume of the banking business in the City of New York is carried on by national banks. Can it be contended that every officer, agent or clerk of those banks can willfully and fraudulently forge and alter the books of the bank, thereby defrauding the stockholders and deposit-

ors of the bank, and committing the crime of forgery under the statutes of this State, and yet remain without the jurisdiction of the criminal courts of the State? Such a doctrine would oust the State courts of jurisdiction in perhaps a majority of the cases of forgery in the second and third degree; and render nugatory the provisions of the Penal Code as to forgery in the second and third degree. It is manifest that a false and fraudulent entry upon the books of a national bank is a crime against the people of the State, just as much as if the bank were a State bank. The national bank is located in the State of New York. Its stockholders and depositors are usually citizens of the State. A false and fraudulent entry on the books is a crime against the depositors and stockholders. It is true that an officer of the bank who makes such false and fraudulent entry commits thereby a crime against the bank, and in so doing commits an offense cognizable in the Federal Courts. But the fact that his act is a crime against the bank does not alter the fact that it is also an offense against the people of the State, which the State Courts can and should punish."

As sustaining his position, he referred to Cross vs. North Carolina, 132 U. S., 131, but that case in no way sustains his contention.

A man had been convicted in the State Court for forging a note. He had followed up this crime by committing the crime of making false entries concerning the note in the books of a national bank, and it was maintained by counsel that a conviction under the State law could not be good, but the Supreme Court said the same act or series of acts may constitute an offense equally against the United States and against a State and subject the guilty party to punishment under the laws of each government. The Court says:

"It is contended that the courts of the United States have exclusive jurisdiction to try the defendants for having made the false entries on the books of the bank with the intent stated in the plea; that the forgery in

question is an integral, essential element in such entries, which were false only because based upon the forged notes; that the defendants cannot be tried for the false entries, after being tried for the forgery; consequently, a recognition of the right of the State Court to try them for the latter defense will defeat the jurisdiction of the Federal Court to try them for the former offense. In other words, that where exclusive jurisdiction is given to the Court of the United States to try an offense, the State Court cannot exercise jurisdiction in respect to any particular act constituting an essential ingredient of that offense, although the commission of such act is made a crime against the State.

"The fallacy of this argument is in assuming that the offense described in Section 5209 of the Revised Statutes, namely, the making by an officer or agent of a national banking association of a false entry in its books, reports or statements, with intent to injure or defraud the association, or others, or with the intent to deceive its officers or any agent appointed to examine its affairs, necessarily involves the crime of forgery, of which the defendants were found guilty. If the notes in question had not been forged, but, with or without the consent of the obligors, had been temporarily placed by the defendants among the assets of the bank, and entered upon its books, when they were not its property, with intent to deceive the agent appointed to examine its affairs, they could have been punished under Section 5209. On the other hand, the crime defined in Section 1029 of the Code of North Carolina would have been complete if the defendants simply made and forged, or caused to be made and forged, or willingly assented to the making or forgery of the notes described in the indictment, with intent to defraud, and did not follow it up by committing the crime against the United States of making false entries in respect thereto upon the books of the bank, with the intent to deceive the agent designated to examine its affairs. The crime against the State could not be excused or

obliterated by committing another and distinct crime against the United States.

"It is also contended that the crime of forgery, as defined in the Code of North Carolina, and described in the indictment, is made, by Section 5418 of the Revised Statutes, an offense against the United States; and that as the courts of the United States are invested with exclusive jurisdiction 'of all crimes and offenses cognizable under the authority of the United States' (Rev. Stat., Section 711), the judgment must be reversed. This position cannot be sustained. Section 5418 of the Revised Statutes makes it an offense against the United States for any person to falsely make, alter, forge or counterfeit 'any bid, proposal, guaranty, official bond, public record, affidavit or other writing for the purpose of defrauding the United States,' or to utter or publish as true 'any such false, forged, altered or counterfeited bid, proposal, guaranty, official bond, public record, affidavit or other writing, knowing the same to be false, forged, altered or counterfeited for such purpose,' or to transmit to or present at 'the office of any officer of the United States any such false, forged, altered or counterfeited bid, proposal, guaranty, official bond, public record, affidavit or other writing, knowing the same to be false, forged, altered or counterfeited for such purpose' (see also Section 5479).

"We do not think that the crime of which the defendants were found guilty is within either the words or scope of Section 5418. The object of that section was to protect the General Government against the consequences that might result from the forgery, alteration or counterfeiting of documents, records or writings that had some connection with its business as conducted by its own officers. The false making or forging of promissory notes or other securities, purporting to be executed by individuals, and made payable to or at a national banking association, cannot be said to have been done 'for the purpose of defrauding the United

States,' and to constitute the offense described in Section 5418. Such an act may be in fraud of the bank or of its stockholders, but is not, in itself, or within the meaning of that section, a fraud upon the United States.

* * * * * *

"If it were competent for Congress to give exclusive jurisdiction to the courts of the United States of the crime of falsely making or forging promissory notes, purporting to be executed by individuals, and made payable to or at a national bank, or of the crime of uttering or publishing as true any such falsely made or forged notes, it has not done so. Its legislation does not assume to restrict the authority, which the States have always exercised, of punishing in their own tribunals the crime of forging promissory notes and other commercial securities executed by private persons, and used for purposes of private business. The forgery of such instruments is none the less injurious to the welfare of the people of a State because they happen to be made payable to or at banking associations which come into existence under the authority of the United States. If the punishment by the State of the crime of forgery, of which the defendants were found guilty, leaves them exposed to punishment by the United States for having made false entries upon the books of the bank of which they were officers, with the intent to deceive the agent appointed by the General Government to examine its affairs, it results from the fact that they are amenable to the laws of the United States, as well as of the State of North Carolina, and may be subjected to punishment for violating the laws of each government. The forgery may have been committed in order that the instrument forged might thereafter become the basis of false entries upon the books of the bank. But that circumstance cannot defeat the authority of the State, charged with the duty of protecting its own citizens, from punishing the forgery as, in itself, a distinct, separate offense committed within its limits and against its laws."

VII.

In all that I have said I have assumed that the offences charged in these indictments are such as are expressly made punishable under the Revised Statutes of the United States, and especially under Section 5209 already quoted. I think it requires but little examination of them to show that this is true.

The indictments are five in number, each consisting of two counts. In each of them one count alleges the making and issuing on a day named of a check on the Second National Bank by the defendant, as president, without authority, and that he put off the check, and thereafter with intent to defraud and conceal made certain specified false entries in a book of bank in order to make it appear money had been loaned, when it had not been, but had been appropriated by Eno.

The counts I have thus described are somewhat confused, and, it may be, repugnant in their language, but I feel sure it will not be denied that I correctly state the meaning of such counts.

In each indictment another count also alleges he "did forge a certain book of account" of the bank by which said book of accounts a certain pecuniary obligation of persons named purported to be created and affected, "and in the forgery of the said book of accounts the said John C. Eno with intent to defraud, feloniously did then and there falsely make and forge in said book of accounts the words following," and then quotes entries of certain alleged loans.

It is clear that in all the counts the crime alleged is making a false entry with intent to deceive, and this is identical in effect with the crime denounced in Section 5209 of the Revised Statutes, which is making a "false entry with intent to injure or defraud or to deceive."

The insertion of the word "forged" in one of the counts to bring the offense within the language of the Penal Code of New York, done admittedly in order to

extradite Eno from Canada, cannot make any difference. To describe a false entry as a forged entry makes no difference, any more than to describe embezzlement or false pretenses as larceny. The question for the Court to decide is what is the offense charged and is it in its essence the offence denounced by the Revised Statutes.

Forgery is defined as "the act of fabricating or producing falsely.

"In criminal law it denotes (at common law) a false making of any instrument," &c.

VIII.

One count in each indictment fails in express words to allege that the Second National Bank was a bank organized under the National Banking Act. That omission is supplied so far as to make the count present a Federal question by the allegations in the amended petition, which are not and cannot be denied.

IX.

In Commonwealth vs. Ketner, 92 Penn. State, 372, there was a decision as to embezzlement by a cashier of a national bank, though the opinion does not refer to the Revised Statutes.

In that act it was claimed by counsel that:

"The Courts of Pennsylvania have the power to try and punish the offense of which Torrey was guilty. It is a crime against this State. She has the authority, as one of her reserved rights, to try and punish such offenders. The money embezzled belongs to indi-

viduals who own the stock of the bank. All that is conferred by Federal authority on the bank is its franchises. It is none the less therefore the property of the citizens of Pennsylvania. The source of title is of no consequence in a criminal prosecution, the question is simply one of the power of the State to protect its own citizens."

But the Supreme Court of Pennsylvania, after examining the statutes of that State, say, in terms precisely applicable to the New York statute :

"We are spared further comment upon these acts for the reason that they have no application to national banks. Neither of them refer to national banks in terms; and we must presume that, when the Legislature used the words 'any bank,' that it referred to banks created under and by virtue of the laws of Pennsylvania. The national banks are the creatures of another sovereignty. They were created and are now regulated by the Acts of Congress. When our Acts of 1860 and 1861 were passed there were no national banks, nor even a law to authorize their creation. When the Act of 1878 was passed Congress had already defined and punished the offense of embezzlement by the officers of such banks. There was, therefore, no reason why the State, even if it had the power, should legislate upon the subject. Such legislation could only produce uncertainty and confusion, as well as a conflict of jurisdiction. In addition, there would be the possible danger of subjecting an offender to double punishment, an enormity which no Court could permit, if it had the power to prevent it.

"An Act of Assembly prescribing the manner in which the business of all banks shall be conducted, or limiting the number of the directors thereof, could not by implication be extended to national banks, for the reason that the affairs of such banks are exclusively under the control of Congress. Much less can we, by mere implication, extend penal statutes like those of 1861 and 1878 to such institutions. The offense for

which the relator is held is not indictable either at common law or under the statutes of Pennsylvania. We therefore order him to be discharged."

X.

As the State Court had no jurisdiction to try the defendant, he was rightly discharged.

October 12, 1894.

GEORGE BLISS.